



**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
EMPLOYEE BENEFITS DIVISION**

AGREEMENT #C000545

between

**NEW YORK STATE
DEPARTMENT OF CIVIL SERVICE**

and

**ISLAND PEER REVIEW ORGANIZATION,
INC.**

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ARTICLE I. DEFINITION OF TERMS

- 1.1.0 Appeal** means a request, with required supporting documentation from an Employee's Treating Physician to the Contractor for review of conflicting medical opinions regarding an Employee's degree of disability.
- 1.2.0 Appeal Period for Security Services, Security Supervisors and Agency Law Enforcement Services Units' Employees** means three (3) Business Days from the day the Employing Agency notifies the Employee to return to work based on the Evaluating Physician's determination. If the Employee's notification to return to work *occurs prior to noon*, that day is the first day of the Appeal period. If such notification occurs at noon, after noon or on a non-Business Day, the next Business Day is the first day of the Appeal period.
- 1.3.0 Appeal Period for State Police Supervisors' and Bureau of Criminal Investigators' Units and Management/Confidential Group** means fifteen (15) Business Days from the day the Employing Agency notifies the Employee to return to work based on the Evaluating Physician's determination. If the Employee's notification to return to work occurs prior to noon, that day is the first day of the Appeal period. If such notification *occurs at noon, after noon* or on a non-Business Day, the next Business Day is the first day of the Appeal period.
- 1.4.0 Appeal Request Form** means a form designed by the Contractor and approved by the NYS Department of Civil Service (DCS), which must be used by the Treating Physician to file an Appeal and, when properly completed, provides sufficient information for the Contractor to perform a Program Review.
- 1.5.0 Board** means the Workers' Compensation Board, which is the State agency responsible for interpreting the Workers' Compensation Law and making final determinations on the occupational nature of an employee's injuries and amount of associated indemnity benefits.
- 1.6.0 Business Days** means every Monday through Friday, except for those days which have been designated as business holidays by the Contractor and approved as such by DCS prior to each January 1st.
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- 1.7.0 Confidential Information (CI)** means any information, including demographic information collected from an Employee, that relates to the past, present, or future physical or mental health or condition of an Employee, to the provision of medical or related health care to an Employee, that identifies the Employee, or with respect to which there is a reasonable basis to believe that the information can be used to identify the Employee.
- 1.8.0 Contractor** means Island Peer Review Organization, Inc. (IPRO), the firm under contract with the NYS DCS to provide the required Workers' Compensation Dispute Resolution Program (DRP) medical review services as required by this Agreement.
- 1.9.0 Days** means Calendar Days unless otherwise noted.
- 1.10.0 DCS** means the New York State Department of Civil Service.
- 1.11.0 Dispute Resolution Program (DRP)** means the New York State program that provides covered Employees an opportunity for a neutral third party medical review of conflicting medical opinions (Appeals) regarding an Employee's degree of disability.
- 1.12.0 Employee** means a person who is appointed to one of the Employing Agencies in a position contained within the: Security Services Unit (represented by NYSCOPBA), Security Supervisors Unit (represented by Council 82, AFSCME, AFL-CIO), or the Agency Law Enforcement Services Unit (represented by Council 82, AFSCME, AFL-CIO). Employee also means a person who is appointed as a Member of the Division of New York State Police who is in a position contained within the State Police Investigators Unit [represented by the New York State Police Investigators' Association ('NYSPIA') Local 4, I.U.P.A., AFL-CIO], the State Police Commissioned Officers and Non-Commissioned Officers (Supervisors) Unit [represented by the Police Benevolent Association of New York State Troopers, Inc. (PBA)], or who is designated Management/Confidential.
- 1.13.0 Employing Agency** means one of the organizational entities of the State of New York which employs persons eligible to participate in the DRP.

1.14.0 ET means prevailing Eastern Time.

1.15.0 Evaluating Physician means the medical consultant employed by the State Insurance Fund (Evaluating Physician) who determines the Employee's degree of disability, upon which management decides if the Employee should return to work in light or full duty capacity and/or the physician employed by the Division of New York State Police (Staff Physician) who determines the Employee's degree of disability, upon which management decides if the Employee should return to work in light or full duty capacity.

1.16.0 Fund means the State Insurance Fund, the State agency that acts as the State's workers' compensation insurance carrier.

1.17.0 Labor Agreement(s) means the negotiated collective bargaining agreements between the State and the Security Services Unit (represented by NYSCOPBA), and the Security Supervisors Unit (represented by Council 82, AFSCME, AFL-CIO), and the Agency Law Enforcement Services Unit (represented by Council 82, AFSCME, AFL-CIO). For purposes of this Agreement, this term also includes the agreements reached between the State and the State Police Investigators Unit [represented by the NYS Police Investigators Association (NYSPIA), Local 4, I.U.P.A., AFL-CIO] and the State Police Commissioned Officers and Non-Commissioned Officers (Supervisors) Unit (represented by the Police Benevolent Association of New York State Troopers, Inc. (PBA)].

1.18.0 Light Duty means that light duty assignments (for all employees not employed by the Division of New York State Police) will be within the Employee's title and at the Employee's work location. In cases where minimum staffing levels have been established, light duty will not be used to affect existing minimum staffing levels.

1.19.0 MEP means the Medical Evaluation Program, which is the voluntary program that provides injured employees an expedited medical consultant examination to determine an Employee's degree of disability upon which management makes a decision regarding the Employee's assignment to light duty.

1.20.0 Modified Duty Assignment means assignments (for group 2 Employees) to perform administrative duties including, but not limited to: desk duty, records management,

inventory control, non-criminal investigations, communications and other tasks not related to patrol functions, field supervision, or active criminal case investigation.

- 1.21.0 Pass Day** means day of the week the Employee is not scheduled to work.
- 1.22.0 Program** means the Dispute Resolution Program.
- 1.23.0 Program Review** means the Contractor's review of the conflicting medical evaluations, which are Appealed by the Employee's Treating Physician.
- 1.24.0 Program Reviewing Physician (PRP)** means a physician licensed and/or registered with the appropriate licensing and/or disciplinary agency, who has been designated by the Contractor to perform the review of medical records, the Treating and Evaluating Physicians' reports, and other documentation necessary to render an opinion, which will support either the Treating or Evaluating Physicians' determination of the Employees' degree of disability. The PRP cannot be the Staff, Treating or Evaluating Physician.
- 1.25.0 Program Review Period for the Security Services, Security Supervisors and Agency Law Enforcement Services Units' Employees** means seven (7) Calendar Days from the day the Contractor receives a Valid Appeal from the Treating Physician.
- 1.26.0 Program Review Period for the Division of New York State Police Employees** means ten (10) Calendar Days from the day the Contractor receives a Valid Appeal from the Treating Physician.
- 1.27.0 Proposal** means both the Offeror's Technical Proposal and Cost Proposal, dated April 29, 2005 and submitted in response to the RFP entitled "Dispute Resolution Program" dated March 10, 2005.
- 1.28.0 RFP** means the Request for Proposal, entitled "Dispute Resolution Program" dated March 10, 2005.
- 1.29.0 Services** means the Program Services including, but not limited to, the Workers' Compensation Dispute Resolution Program medical review to be provided by the Contractor as required by the Dispute Resolution Program as set forth in this Agreement.

1.30.0 Staff Physician means the physician(s) employed by the New York State Police.

1.31.0 State means New York State.

1.32.0 Treating Physician means the physician chosen by the Employee to provide direct care for his/her disability.

1.33.0 Valid Appeal means an Appeal filed on behalf of an eligible Employee that contains all medical records and supporting information, including the Appeal Request Form needed by the Program Reviewing Physician, to issue an opinion in support of either the Employee's Treating or Evaluating Physician's medical opinion regarding the eligible Employee's degree of disability.

1.34.0 Work Day means any day the Employee is scheduled to report to work. Work Days include Saturdays, Sundays and Holidays.

ARTICLE II. AGREEMENT DURATION AND AMENDMENTS

2.1.0 This Agreement is for five (5) years commencing on November 1, 2005 and terminating October 31, 2010, subject to the termination provisions contained herein.

2.2.0 This Agreement is subject to amendment(s) only upon mutual consent of the Parties, reduced to writing and approved by the Office of the State Comptroller of the State of New York.

ARTICLE III. DOCUMENT INCOPORATION AND ORDER OF PRECEDENCE

3.1.0 This Agreement consists of:

3.1.1 The body of this Agreement (i.e., that portion preceding the signatures of the Parties in execution); and any amendments thereto.

3.1.2 Appendix A--Standard Clauses for all New York State Contracts.

3.1.3 Appendix B--Standard Clauses for All DCS Contracts.

- 3.1.4** The following Exhibits attached and incorporated by reference to the body of the Agreement:

 - 3.1.4a** Exhibit A, which includes the MacBride Act Statement and the Non-Collusive Bidding Certification; and
 - 3.1.4b** Exhibit B, the Request for Proposal entitled, "Dispute Resolution Program", dated March 10, 2005; and
 - 3.1.4c** Exhibit C, the Offeror's Proposal (Technical and Cost), dated April 29, 2005; and
 - 3.1.4d** Exhibit D, "Administrative Fee Schedule".

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

 - 3.2.1** First, Appendix A--Standard Clauses for all New York State Contracts.
 - 3.2.2** Second, Appendix B--Standard Clauses for All DCS Contracts.
 - 3.2.3** Third, any Amendments to the body of this Agreement;
 - 3.2.4** Fourth, the body of this Agreement,
 - 3.2.5** Fifth, Exhibit D, "Administrative Fee Schedule",
 - 3.2.6** Sixth, Exhibit B - the Request for Proposal entitled, "Dispute Resolution Program", dated March 10, 2005, and
 - 3.2.7** Seventh, Exhibit C - the Offeror's Proposal (Technical and Cost), dated April 29, 2005.

- 3.3.0** 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 the tasks of this Agreement in accordance with the terms and conditions of the Agreement.
- 4.2.0** The Contractor acknowledges that the award of the Agreement is based on the Contractor's representation as a qualified Contractor.
- 4.3.0** 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 performing the tasks in accordance with the Agreement and the authority to do business in the State of New York or any other governmental jurisdiction in which the tasks are to be performed.

ARTICLE V. CONTRACTOR RESPONSIBILITIES

- 5.1.0** The Contractor shall execute the various dispute resolution program services and other requirements set forth in this Agreement in such a manner so as to be in compliance with the terms and conditions set forth in this Agreement.

5.2.0 Implementation

The Contractor must undertake and complete all implementation activities by October 31, 2005, so that the Program is fully operational no later than November 1, 2005.

Such implementation activities include, but are not limited to:

- 5.2.1** Development and approval by DCS of an Appeal Request Form which will be used by covered Employees and their Treating Physicians to file an Appeal under the DRP, with such form subject to approval by DCS;
- 5.2.2** Distribution of the Appeal Request Form to State Agencies with Employees covered by the DRP. Filing instructions, including critical Appeal eligibility and filing deadlines shall accompany the Appeal Request Form;
- 5.2.3** Establishment of a Network of Dispute Resolution Program Reviewing Physicians to conduct the review of medical documentation; and
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5.2.4 Staff as may be needed to receive, acknowledge, and track a filed Appeal, initiate the Program Review process, and report the outcome of the Reviews within the specified Program Review Period.

5.30 Program Administration

The Contractor shall maintain an organization sufficient to administer, manage and oversee all aspects of the Program as specified in the Agreement. The Contractor's account team shall be sufficiently staffed to provide timely responses to DCS administrative concerns and inquiries. The Contractor must dedicate a unit that will be specifically assigned to administer the Appeals filed under the DRP.

5.4.0 Network of Dispute Resolution Program Reviewing Physicians

The Contractor shall be responsible for establishing and maintaining a network of Program Reviewing Physicians (PRPs) that meets the following requirements:

5.4.1 PRPs must have specialized expertise in the treatment and/or diagnosis of work-related injuries/illnesses.

5.4.2 PRPs must be certified specialists in the appropriate field when that certification is necessary for making and evaluating degree of disability determinations.

5.4.3 PRPs must be authorized by the New York State Workers' Compensation Board (WCB) as treating or consulting physicians pursuant to Workers' Compensation Law.

5.4.4 The network must have no less than three (3) certified physicians from each of the following specialties: Cardiologist, Chiropractor, Dentist-Oral Surgeon, Dermatologist, Gastroenterologist, Gynecologist, Hematologist, Internist, Neurologist, Orthopedist, Otorhinolaryngologist, Pathologist, Psychiatrist, Podiatrist, Psychiatrist, Psychologist, Radiologist, Hand Surgeon, Neuro-Surgeon, Plastic Surgeon, Vascular Surgeon and Urologist.

5.4.5 The Contractor shall be responsible for contracting with PRPs. This includes negotiating fees and making direct payments to PRPs for services rendered as a part of this Program. PRPs shall not look to DCS for payment of any kind.

5.4.6 PRPs shall be responsible for testifying before the Board when appropriate and necessary.

5.4.7 The Contractor shall be responsible for assuring that the PRP is not the Staff, Treating or Evaluating Physician as defined in this Agreement.

5.4.8 The PRP (or designated Program Reviewer) must complete the Program Review within the Program Review Period.

5.4.9 The PRP's determination regarding an Employee's degree of disability is based on the review of the Employee's medical documentation and other appropriate documentation, which may include laboratory reports and x-rays, and Treating and Evaluating Physicians' reports.

5.4.10 All medical information received from the Treating Physician, the Evaluating Physician, and the Fund must be maintained in a confidential and secure manner consistent with the terms of this Agreement.

5.4.11 The Contractor shall be responsible for providing a written report of the Program Review findings to the Employee, the Employing Agency, the Treating Physician, the Evaluating Physician, the appropriate Union, and the Fund in accordance with the required Program Review Period. The report must include an Employee identifier and a statement in support of either the Treating or Evaluating Physician's degree of disability determination.

5.5.0 Program Communications

The Contractor shall be responsible for the communication needs of the Program which shall include at a minimum:

5.5.1 Mailing services, telephone and facsimile capabilities and other electronic media to be used for the secure transfer and receipt of information between the Contractor and the Treating Physician, Evaluating Physician, Employing Agency, appropriate Union and the Fund.

5.5.2 Working with the DCS to design and develop communication material for Employees covered by the Workers' Compensation DRP to include, but not be limited to:

5.5.2a The Appeal Request Form which must be used by eligible Employees to file an Appeal under the DRP;

5.5.2b A process for distributing the DRP information and Appeal Request Form (one for each of the 2 groups described in this Agreement);

5.5.2c A brochure or other form of informational material that describes the details of the DRP, including but not limited to, the procedures and eligibility criteria for filing an Appeal; filing instructions and Program Review Period deadlines; and

5.5.2d Other information or material proposed by the Contractor to assure the effective implementation and delivery of the required Program Services.

5.5.3 Designing, producing, and distributing an Appeal Request Form, subject to the approval of the DCS, which will be available to Employees through their Employing Agencies. The Appeal Request Form should contain at a minimum:

5.5.3a Employee information including: the Employee's name, home address, telephone number, date and brief description of the accident or illness, the Employing Agency, the Employee's work address, the date of Appeal;

5.5.3b Medical information including: the Treating Physician's name, address, telephone number, determination of the Employee's level of disability, diagnosis, treatment plan, and prognosis and the Evaluating Physician's name, address, telephone number and determination of the Employee's level of disability.

5.6.0 Maintenance and Disclosure of Employee Records and Reporting

The Contractor shall be responsible for the following:

- 5.6.1** Proper Program control and accounting of the Appeals and related Employee records. Program reporting requirements, including monthly reports indicating the number of Appeals and disposition of each. The format and due date of such reports shall be agreed upon by the Parties.
- 5.6.2** Maintaining a medical case record for each Appeal, which shall include but not be limited to the Treating Physician's and the Evaluating Physician's reports, and the Contractor's determination. In cases where the Appeal has not been received by the Contractor within 90 days of its receipt of information used to establish the medical case record, the Contractor shall destroy, in a confidential and secure manner, all CI, including and not limited to medical case records and all other records related to the case. If such destruction is not feasible, the Contractor shall limit further uses and disclosures of such CI to those purposes that make the return or destruction of the CI infeasible.
- 5.6.3** The Contractor shall use appropriate, documented safeguards to prevent the use or disclosure of DCS' CI 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.
- 5.6.4** The Contractor shall be responsible for producing a monthly report containing, at a minimum, the number of Appeals received, the number of Program Reviews completed, and the outcome of each Program Review. The details of the report must reflect the bargaining unit and other information as may be required by the DCS.
- 5.6.5** In response to the specific requests from the State, the Contractor must be prepared to produce ad hoc reports to measure the critical elements of the DRP.

ARTICLE VI. PERFORMANCE GUARANTEES

The Parties agree that the following guarantees and the corresponding penalty(ies) for failure to meet each guarantee shall be implemented effective November 1, 2005. The Contractor acknowledges and agrees that failure to perform the Contractor responsibilities set forth in

Article V of the Agreement in such a manner which either meets or exceeds any and/or all of the Performance Guarantee(s) as set forth in this Article and/or fails to make any payment(s) of any such penalty(ies) for such failure to meet any Performance Guarantee(s) does not relieve the Contractor of the performance of the activities, duties and obligations as otherwise set forth in the Agreement.

6.1.0 Implementation Activities

6.1.1 Implementation Guarantees

6.1.1a The Contractor guarantees that all implementation activities will be completed no later than October 31, 2005.

6.1.1b The Contractor guarantees that it will be prepared to receive, acknowledge and track a DRP Appeal received on and after November 1, 2005.

6.1.2 Implementation Penalties

6.1.2a The Contractor shall pay to DCS a penalty of [REDACTED] per day for each day implementation activities have not been completed after October 31, 2005.

6.1.2b The Contractor shall pay to DCS a penalty of [REDACTED] per day for each Appeal it is unable to receive, acknowledge and track on and after November 1, 2005.

6.2.0 DRP Reviewing Physician Panel

6.2.1 DRP Reviewing Physician Panel Guarantee

6.2.1a The Contractor guarantees that the DRP Physician Reviewing Panel meets the criteria in Article 5.4 of this Agreement and is established and available to perform reviews and other needed program related duties/services on and after November 1, 2005.

6.2.2 DRP Reviewing Physician Panel Penalties

6.2.2a The Contractor shall pay to DCS a penalty of [REDACTED] per day for each day that it fails to establish a Physician Reviewing Panel in accordance with the requirements of this Agreement.

6.2.2b The Contractor shall pay to DCS a penalty of [REDACTED] per day for each day that a PRP and/or designated reviewer is unable to complete a review and/or a required function on and after November 1, 2005.

6.2.2c The Contractor shall pay to DCS a penalty of [REDACTED] per day for each day that the Contractor does not issue a decision within the required Program Review Period.

6.3.0 Program Communications

6.3.1 Program Communications Guarantee

6.3.1a The Contractor guarantees that the Appeal communication information and the Appeal Request Form are in place and available on and after November 1, 2005 to Employees, Employing Agencies, Treating Physicians, Evaluating Physicians, appropriate Union and the Fund.

6.3.2 Program Communications Penalty

6.3.2a The Contractor shall pay the DCS a penalty of [REDACTED] for the failure to complete any review due to the unavailability of needed notifications and/or the required Appeal Request Form.

6.4.0 Reporting

6.4.1 Reporting Guarantee

6.4.1a The Contractor guarantees that it will submit monthly reports indicating the number of Appeals and disposition of each to the DCS in a format and due date agreed upon by the Parties.

6.4.2 Reporting Penalty

6.4.2a The Contractor shall pay the DCS a penalty of [REDACTED] per day for the failure to transmit a monthly report in the format and on the due date agreed upon by the Parties.

6.5.0 Waiver of Penalties

6.5.1 If DCS determines that circumstances outside the Contractor's control may have affected the Contractor's ability to meet any of the above requirements, the DCS may waive any or all penalties, which have accrued. Following a review of the circumstances, DCS, at its sole discretion, may waive any or all penalties, which have accrued.

ARTICLE VII. PAYMENT FOR SERVICES

7.1.0 The DCS agrees to reimburse the Contractor in accordance with the rates, reimbursement levels, procedures and time frames provided for in this Article and in Exhibit D of the Agreement.

7.2.0 All reimbursement to the Contractor for services rendered under this Agreement shall be based on a submittal to the DCS by the Contractor of a Standard New York State Voucher in a form acceptable to the DCS and the Comptroller of the State of New York. The Contractor shall bill the DCS monthly, in arrears, for services rendered in accordance with the conditions and requirements of this Agreement.

7.3.0 All of the prices, terms, warranties and benefits granted by the Contractor herein are comparable to or better than the equivalent terms being offered by the Contractor to other customers using similar scope and volume of services. If, during the course of this Agreement, the Contractor enters into arrangements with any other customers providing services which are equal to or greater than those services to be provided under this Agreement at more favorable terms, this Agreement shall thereupon be deemed amended to provide the same terms to the DCS.

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

ARTICLE VIII. RECORDS AND INFORMATION TO BE FURNISHED

8.1.0 The DCS shall furnish to the Contractor all information, which the Contractor may reasonably require with regard to any matters pertaining to the Contractor's responsibilities under this Agreement.

ARTICLE IX. MODIFICATION OF REQUIRED SERVICES

9.1.0 In the event that laws or regulations enacted by the federal government and/or the State of New York, and/or collective bargaining changes, and/or administrative modifications implemented by DCS, have an impact upon the conduct of this Agreement in such a manner that the DCS determines that any requirements of the Agreement must be revised, the DCS shall notify the Contractor of any such revisions and shall provide the Contractor with a reasonable time within which to implement such revisions.

9.2.0 In the event that the State and its public employee unions enter into collective bargaining agreements that require changes in design elements or requirements of the Agreement, the DCS shall notify the Contractor of such changes and shall provide the Contractor with reasonable notice to implement such changes.

9.3.0 To the extent that any of the events as set forth in this Article shall take place and constitute a material and substantial change in the delivery of services which the Contractor is required to perform or deliver under the Agreement, the Contractor may submit a written request to the DCS to initiate review of the fee(s) received by the Contractor for services provided under the terms of the Agreement, accompanied by appropriate documentation as may be required by the DCS. The DCS reserves the right to review such request within a reasonable period of time and in its sole discretion make a written determination as to whether such request shall be approved or rejected. Should the DCS approve the Contractor's request to modify the fee(s), such approval shall be subject to written amendment and approval by the Office of the State Comptroller.

CONTRACTOR: Island Peer Review Organization, Inc.

CONTRACT NUMBER: C000545

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

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE



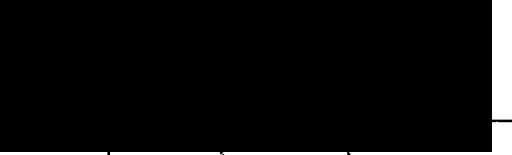
Date: 9/21/05

By: _____

Name: Daniel E. Wall

Title: President

ISLAND PEER REVIEW ORGANIZATION, INC.



Date: September 9, 2005

By: _____

Name: Theodore O. Will

Title: Chief Executive Officer

STATE OF New York)
) ss:
COUNTY OF Nassau)

SHERRY M. OBLAS
NOTARY PUBLIC, State of New York
No. 010B5042229
Qualified in Kings County
Commission Expires April 17, 2007

On the 9th day of September, 2005, before me personally came Theodore O. Will, to me known, and known to me to be the person who executed the above instrument, who, being duly sworn by me, did for her/himself depose and say that (s)he is the Chief Executive Officer of Island Peer Review Organization the corporation or organization described in and which executed the above instrument; and that (s)he signed his/her name thereto.



NOTARY PUBLIC

Approved as to form
FORM
NYS ATTORNEY GENERAL
ELIOT SPITZER
ATTORNEY GENERAL

By: _____
PEPPER HAVILLTIO
ASSOCIATE ATTORNEY

Date: _____

APPROVED AS TO FORM
NYS ATTORNEY GENERAL
OCT 04 2005
PEPPER HAVILLTIO
ASSOCIATE ATTORNEY

Approved:

ALAN G. HEVESI
STATE COMPTROLLER

By: _____

Date: _____

APPROVED
DEPT. OF AUDIT & CONTROL
NOV 30 2005
FOR THE STATE COMPTROLLER

APPENDIX A
STANDARD CLAUSES FOR ALL NEW YORK STATE CONTRACTS

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

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

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$15,000 (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 \$30,000 (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 warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

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

(B) *PRIVACY NOTIFICATION.* (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purpose and for any other purpose authorized by law; (2) the personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease "the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, AESOB, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

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

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

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

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

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

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

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article XI-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 agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State. In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State, otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

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

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

Department of Economic Development
Division for Small Business
30 South Pearl Street – 7TH Floor
Albany, New York 12245
Tel. 518-292-5220

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

Department of Economic Development
Minority and Women's Business Development Division
30 South Pearl Street – 2nd Floor
Albany, New York 12245
<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. Contact the Department of Economic Development, Division for Small Business, 30 South Pearl Street; Albany New York 12245, for a current list of jurisdictions subject to this provision.

22. PURCHASES OF APPAREL. In accordance with State Finance Law Section 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 hour 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 for this contract by the bidder.

Revised May 2003

APPENDIX B

STANDARD CLAUSES FOR ALL DCS CONTRACTS

1. **INTEGRATION** This Agreement, including all Exhibits, copies of which are attached hereto, and incorporated by reference, constitutes the entire Agreement between the Parties. All prior agreements, representations, statements, negotiations and undertakings are superseded hereby.

All statements made by the DCS 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 fifteen thousand dollars (\$15,000) in amount be first approved by the Comptroller of the State of New York before becoming effective. The Parties recognize that the Agreement is wholly executory until and unless approved by the Comptroller of the State of New York.

3. **CHOICE OF LAW** The Parties agree that the Agreement shall be interpreted according to the laws of the State of New York. The Contractor shall be required to bring any legal proceeding against the DCS arising from the Agreement in New York State courts in Albany County.

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

Pending final decision of any Article 78 proceeding hereunder, both Parties shall proceed diligently with the performance of the Agreement in accordance with the President's decision.

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

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

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

8. **NON-ASSIGNABILITY** Neither the rights nor the obligations of the Contractor under 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 DCS.

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

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

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

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

Notwithstanding anything to the contrary in this Agreement, neither the DCS nor 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 DCS or the State for the infringement of United States patents, copyrights or proprietary rights arising from the Contractor's or the DCS's use of any software, equipment, data, materials and/or information of any kind prepared, developed or furnished by the Contractor in connection with performance of the Agreement and, in any such suit, shall satisfy any final judgment for such

infringement. The DCS 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 DCS'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 DCS arising out of a claim that the DCS's use of any software, equipment, materials and/or information under the Agreement infringes on any patent, copyright, or proprietary right, such action shall be forwarded by the DCS to the Contractor for defense and indemnification under this Article and to the Office of the Attorney General of the State of New York together with a copy of the Agreement. If upon receipt of such request for defense, or at any time thereafter, the Contractor is of the opinion that the allegations in such action, in whole or in part, are not covered by the defense and indemnification set forth herein, the Contractor shall immediately notify the DCS and the Office of the Attorney General of the State of New York, in writing, and shall specify to what extent the Contractor believes it is and is not obligated to defend and indemnify under the terms and conditions of the Agreement. The Contractor shall in such event protect the interests of the State of New York and shall take the steps necessary to secure a continuance to permit the State of New York to appear and defend its interest in cooperation with the Contractor, as is appropriate, including any jurisdictional defenses which the State shall have.

12. DATE/TIME WARRANTY The Contractor warrants that products furnished pursuant to 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 therefrom, 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. FORCE MAJEURE Neither Party to the Agreement shall be liable or deemed to be in default for any delay or failure in performance under the Agreement resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, wars, riots, civil disturbances,

insurrections, accident, fire, explosions, earthquakes, floods, the elements, acts or omissions of public utilities or strikes, work stoppages, slow downs or other labor interruptions due to labor/management disputes involving entities other than the Parties to the Agreement, or any other causes not reasonably foreseeable or beyond the control of a Party. The Parties are required to use best efforts to eliminate or minimize the effect of such events during performance of the Agreement and to resume performance of the Agreement upon termination or cessation of such events.

14. TIME OF THE ESSENCE The DCS and the Contractor acknowledge and agree that time is of the essence for the Contractor's performance under the Agreement.

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

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

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

Each Party agrees that it shall perform its obligations under this Agreement in accordance with all applicable federal and New York State laws, rules, and regulations now or hereafter in effect.

17. TAXES It shall be understood that the DCS, 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 DCS' normal business operations.

18. INDEPENDENT CONTRACTOR The Parties agree that the Contractor is an independent contractor, and the Contractor, its officers, employees, agents, consultants and/or sub-contractors in the performance of the Agreement shall act in an independent capacity and not as agents, officers or employees of the State or the DCS. 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 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 DCS with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, State, and local taxes, and all FICA contributions.

19. NO THIRD PARTY BENEFICIARIES Nothing contained in the Agreement, expressed or implied, is intended to confer upon any person, corporation, other than the Parties hereto and their successors in interest and assigns, any rights or remedies under or by reason of the Agreement.

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

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

22. USE RESTRICTIONS AND INTELLECTUAL PROPERTY This Agreement clarifies that all work by the Contractor for the DCS 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 DCS. Furthermore, the DCS and Contractor agree that the State of New York and the DCS are the owners of all copyrights regarding the work. Contractor warrants to the State of New York and the DCS 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, materials, and publications used by the Contractor in the course of its performance under the Agreement which have been agreed upon by the Parties as generic materials are specifically excluded from this provision.

23. 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 the Agreement, the Contractor becomes aware of a relationship, actual or potential, which may be considered a violation of the POL or which may otherwise be considered a conflict of interest, the Contractor shall notify the DCS in writing immediately. Should the DCS thereafter determine that such employment is inconsistent with State law, the DCS shall so advise the Contractor in writing, specifying its basis for so determining, and may require that the contractual or employment relationship be canceled. Failure to comply with these provisions may result in suspension or cancellation of the Agreement and criminal proceedings as may be required by law.

The Contractor is required to make full disclosure of any circumstances that could affect its ability to perform in complete compliance with the POL. Any questions as to the applicability of these provisions should be addressed by the Contractor to the New York State Ethics Commission, 39 Columbia Street, Albany, New York 12207; telephone 1-800-87-ETHICS.

24. AUDIT AUTHORITY The Contractor acknowledges that the DCS 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 the Agreement and any applicable State and federal statutory and regulatory authorities. Such audit activity may include, but not necessarily be limited to, the review of documentary evidence to determine the accuracy and fairness of all items on the Contractor's submission of claims for payment under the Agreement,

and the review of any and all activities relating to the Contractor's administration of the Agreement.

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

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

25. 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 DCS, be grounds for termination of this Agreement.

The Contractor shall promptly advise the DCS of all requests made to the Contractor for information regarding the performance of services under this Agreement, including any information provided by the DCS, 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.

26. 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 Contractor's performance under this Agreement. For purposes of this Agreement, all State information of which Contractor, its officers, agents, employees and subcontractors becomes aware during the course of performing services for the DCS 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 Contractor without use of confidential information of the State.
-

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

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 DCS or the State.

This representation shall survive termination of this Agreement.

27. CONSULTING SERVICES The Contractor shall meet the ongoing advice and recommendation needs of the DCS regarding the subject program services by providing consultant services in a prompt and professional manner. Such responsibility shall include, but is not limited to, keeping the DCS informed concerning such matters as technological improvements, administrative improvements, and State or federal legislation that may affect program requirements. The Contractor acknowledges and agrees that the DCS is under no obligation to follow or use the consultant services provided by the Contractor under the Agreement.

28. FREEDOM OF INFORMATION LAW Disclosure of information and material provided to the DCS 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 DCS 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 DCS 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 and identified as such upon submission. Generically marking all material as "Confidential" will not be considered adequate for the purpose of this section.

The DCS' 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 DCS will address each party's interests fully in accordance with the procedures required by Article 6 of the Public Officers Law.

29. TERMINATION OF AGREEMENT The Agreement may be terminated by mutual written agreement of the Parties.

The Agreement may be terminated by the DCS for cause upon the failure of the Contractor to comply with the terms and conditions of the Agreement, including any exhibits incorporated herein, provided that the DCS shall give the Contractor written notice via registered or certified mail, return receipt requested, or hand delivery, such written notice to specify the Contractor's failure and the termination of the Agreement. Termination shall be effective ten (10) Business Days after receipt of such notice unless the Contractor, in the opinion of the DCS, 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

DCS 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 DCS deems that termination would be in the best interest of the State provided that the DCS 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 deemed terminated immediately upon the filing of a petition in bankruptcy or insolvency, by or against the Contractor, unless such petition is dismissed within thirty (30) days. If so deemed by the DCS, such termination shall be immediate and complete, without termination costs or further obligation by the DCS to the Contractor.

The Agreement may be terminated immediately in the event the DCS determines that funds are unavailable. The DCS 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 DCS shall provide written notice immediately thereafter. The DCS 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 is received either orally or in writing by the Contractor from the DCS.

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 DCS, to cancel such outstanding obligations as the Contractor deems appropriate in the exercise of sound business judgment.

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

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

The Contractor agrees to be solely responsible for the recruitment, hiring, provision of employment benefits, payment of salaries, and management of its personnel. These functions shall be carried out by the Contractor in accordance with the provisions of 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 the Agreement. In the event that any of the key personnel will be or are unavailable for the performance of their duties, the Contractor will designate and propose to the DCS an equally qualified alternate with full authority to act for the unavailable key person.

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

The DCS reserves the right to demand the reassignment or cancellation of assignment to duties under the Agreement of any Contractor personnel so assigned. The DCS 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 DCS exercises its right under this provision, it agrees to provide written notice to the Contractor setting forth its reasons with specificity.

31. 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 the 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 DCS' operations, financial and legal staff, respectively. For purposes of the Agreement, maintenance of such staff and staff availability by the Contractor shall in no way create any agency relationship between the DCS and the Contractor.

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

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

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

32. SUB-CONTRACTORS The Contractor may arrange for specified portions of its responsibilities under the 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 the Agreement must be fully explained by the Contractor to the DCS. The Contractor retains the ultimate responsibility for all services performed under the Agreement. The DCS 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 the Agreement. Such functionally identical and consistent provisions shall include, but not be limited to, the following provisions of the Agreement: Appendix A - Standard Clauses For All New York State Contracts; Appendix B - Standard Clauses for All DCS Contracts; the Articles pertaining to Audit Authority and Confidentiality, and such other Agreement Articles as may be specified by the DCS.

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 DCS' review and approval. The DCS will review the document(s) and advise the Contractor of its approval or disapproval within 30 days.

The Contractor shall give the DCS 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 the Agreement.

The DCS's requirement of prior approval of any subcontract under the Agreement shall not make the DCS 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 DCS.

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

33. 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 DCS receive prior written authorization from the DCS.

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 DCS, 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.

34. CONTRACTOR COMPLIANCE WITH EXECUTIVE ORDER NO. 127 The Contractor certifies that all information that it has provided or will provide to the Department with respect to Executive Order No. 127 is complete, true, and accurate.

The Contractor shall demonstrate its compliance with Executive Order No. 127 throughout the term of the Agreement by disclosing to the Department information on every person or organization retained, employed, or designated by or on behalf of the Contractor to attempt to influence the procurement process throughout the term of the Agreement. An "*attempt to influence the procurement process*" means any attempt to influence any determination of a member, officer or employee of the Department or any other New York State Executive agency with respect to the solicitation, evaluation or award of a procurement contract, or the preparation of specifications or request for submission of proposals for a procurement contract. The Contractor also shall disclose whether such persons or organizations have a financial interest in the procurement. "*Financial interest in the procurement*" means that a person or organization (i) owns or exercises direct or indirect control over, or owns a financial interest of more than one percent in, a contractor or other entity that stands to gain or benefit financially from a procurement contract; (ii) receives, expects or attempts to receive compensation, fees, remuneration or other financial gain or benefit from a contractor or other individual or entity that stands to benefit financially from a procurement contract; (iii) is being compensated by, or is a member of, an entity or organization which is receiving, expecting, or attempting to receive compensation, fees, remuneration or other financial gain from a contractor or other individual or entity that stands to benefit financially from a procurement contract; (iv) receives, expects or attempts to receive any other financial gain or benefit as a result from the procurement contract; or (v) is a relative of a person with a financial interest in the procurement as set forth in clauses (i) through (iv) of this paragraph. For purposes of this paragraph, "*relative*" means spouse, child, stepchild, stepparent, or any person who is a direct descendant of the grandparents of an individual listed in clauses (i) through (iv) of this paragraph, or of the individual's spouse. The Contractor is required to inform the Department of any and all persons or organizations subsequently retained, employed, or designated by or on behalf of the Contractor before the Department or any other New York State Executive agency is contacted by such persons or organizations. The Contractor is required to submit this information in the manner specified by the Department for that purpose.

In addition to the bases for termination set forth in the Agreement and in Section 29 of this Appendix, the Department reserves the right to terminate the Agreement in the event it is found that the Contractor's certification of its compliance with Executive Order No. 127 was intentionally false or intentionally incomplete. Upon such finding, the Department may exercise

its right to terminate the Agreement by providing written notification to the Contractor in accordance with Section 9 of this Appendix.

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

(a) At the times specified herein during the term of this Agreement, the Contractor is required to certify in writing, under penalty of perjury, that:

(i) if the Contractor makes sales delivered by any means to locations within the State of tangible personal property or taxable services having a value in excess of three hundred thousand dollars, the Contractor holds a valid certificate of authority. If the Contractor does not make sales delivered by any means to locations within the state of tangible personal property or taxable services having a value in excess of three hundred thousand dollars, then the Contractor shall so certify;

(ii) if any affiliate of the Contractor makes sales delivered by any means to locations within the State of tangible personal property or taxable services having a value in excess of three hundred thousand dollars, to the best of the Contractor's knowledge, each such affiliate holds a valid certificate of authority. If the Contractor does not have any affiliates making sales delivered by any means to locations within the state of tangible personal property or taxable services having a value in excess of three hundred thousand dollars, then the Contractor shall so certify; and

(iii) if any subcontractor or any affiliate of the subcontractor makes sales delivered by any means to locations within the State of tangible personal property or taxable service having a value in excess of three hundred thousand dollars, to the best of the Contractor's knowledge, each such subcontractor and affiliate holds a valid certificate of authority. If there is no subcontractor or affiliate of the subcontractor making sales delivered by any means to locations within the state of tangible personal property or taxable service having a value in excess or three hundred thousand dollars, then the Contractor shall so certify.

(b) The Contractor's certification shall be made:

(i) in the case of an approved contract having a term of more than one year, annually, by the day prior to the commencement date of the next succeeding year of the contract;

(ii) in the case of an approved contract which authorizes renewal thereof at the conclusion or an initial or subsequent term, by the day prior to the commencement date of the applicable renewal term.

The Contractor is required to submit this information in the manner specified by the Department for that purpose.

The Contractor's certification, along with true copies, if applicable, by each affiliate of the Contractor, each subcontractor and each affiliate of the subcontractor making sales delivered by any means to locations within the State of tangible personal property or taxable services having a value in excess of three hundred thousand dollars, shall be incorporated in, and made a part of, the Agreement.

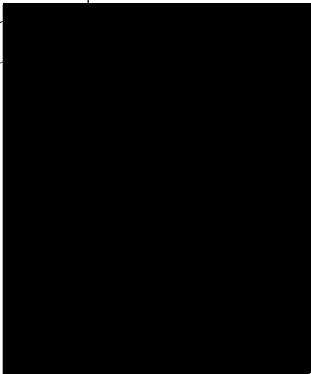
If, at the times specified in this section, the Contractor fails to make the required certification(s), or if, during the term of the contract, the Department discovers that such certification was false when made, then such failure or false certification shall be a material breach of the Agreement, and the Agreement shall be subject to termination if the Department determines that such action is in the best interests of the Department.

February 2005

ADMINISTRATIVE FEE SCHEDULE

<u>CONTRACT YEAR</u>	<u>FEE PER APPEAL*</u>
Year 1	\$ 385
Year 2	\$ 385
Year 3	\$ 385
Year 4	\$ 385
Year 5	\$ 385

* Per Valid Appeal



11/22/05

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

The Offeror/Contractor certifies, under penalty of perjury, that:

- a. if the Contractor makes sales delivered by any means to locations within the State of tangible personal property or taxable services having a value in excess of three hundred thousand dollars, the Contractor holds a valid certificate of authority. If the Contractor does not make sales delivered by any means to locations within the state of tangible personal property or taxable services having a value in excess of three hundred thousand dollars, then the Contractor shall so certify;
- b. if any affiliate of the Contractor makes sales delivered by any means to locations within the State of tangible personal property or taxable services having a value in excess of three hundred thousand dollars, to the best of the Contractor's knowledge, each such affiliate holds a valid certificate of authority. If the Contractor does not have any affiliates making sales delivered by any means to locations within the state of tangible personal property or taxable services having a value in excess of three hundred thousand dollars, then the Contractor shall so certify; and
- c. if any subcontractor or any affiliate of the subcontractor makes sales delivered by any means to locations within the State of tangible personal property or taxable service having a value in excess of three hundred thousand dollars, to the best of the Contractor's knowledge, each such subcontractor and affiliate holds a valid certificate of authority. If there is no subcontractor or affiliate of the subcontractor making sales delivered by any means to locations within the state of tangible personal property or taxable service having a value in excess or three hundred thousand dollars, then the Contractor shall so certify.

This certification, along with true copies, if applicable, of the certificate of authority held by the Contractor and, if applicable, by, each affiliate of the Contractor, each subcontractor and each affiliate of the subcontractor, shall be incorporated in, and made a part of, the contract.

Dated: September 9, 2005

Island Peer Review Organization, Inc.

(Name of Offeror/Contractor)

By: _____


ST-220

(1/05)



New York State Department of Taxation and Finance

Contractor Certification

(Pursuant to Section 5-a of the Tax Law)

For more information, see Publication 222, *Question and Answers Concerning Section 5-a.*

Contractor name Island Peer Review Organization, Inc.				For office use only Contract number	
Contractor's principal place of business 1979 Marcus Avenue, Lake Success, NY		City 11042	State	ZIP code	
Mailing address (if different than above)				Estimated contract value	
Contractor's federal employer identification number (EIN) 11-2662689		Contractor's sales tax ID number (if different from contractor's EIN)		\$	
Contractor's telephone number (516) 326-7767		Contracting state agency Department of Civil Service			

I, Alan F. King, hereby affirm, under penalty of perjury, that I am Chief Financial Officer
(name) (title)

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and that:

Part I. Contract services that are not services for purposes of Tax Law section 5-a

(Mark an X in the box if this statement is applicable. If you mark this box, you do not have to complete Parts II - V.)

- The requirements of Tax Law section 5-a do not apply because the subject matter of the contract concerns the performance of services which are not *services* within the meaning of Tax Law section 5-a.

(If you did not mark the box next to the statement in Part I, mark an X next to the applicable statement in Parts II through V.)

Part II. Contractor registration status

- The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made, and is registered for New York State and local sales and compensating use tax purposes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law.
- As of the date of this certification, the contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.

Part III. Affiliate registration status

- As of the date of this certification, the contractor does not have any affiliates.
- To the best of the contractor's knowledge, the contractor has one or more affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made, and each affiliate exceeding the \$300,000 sales threshold during such periods is registered for New York State and local sales and compensating use tax purposes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed on Schedule A of this certification the name, address, and identification number of each affiliate exceeding the \$300,000 sales threshold during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.
- To the best of the contractor's knowledge, the contractor has one or more affiliates and, as of the date of this certification, each affiliate has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.

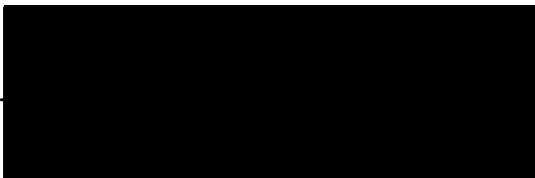
Part IV. Subcontractor registration status

- As of the date of this certification, the contractor does not have any subcontractors.
- The contractor has one or more subcontractors, and each subcontractor has informed the contractor of whether or not, as of the date of this certification, it has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made. Each subcontractor informing the contractor that it has made sales in excess of the \$300,000 threshold during such periods has further informed the contractor that it is registered for New York State and local sales and compensating use tax purposes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed on Schedule A of this certification the name, address and identification number of each subcontractor exceeding the \$300,000 sales threshold during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.
- The contractor has one or more subcontractors, and each subcontractor has informed the contractor that, as of the date of this certification, it has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.

Part V. Subcontractor affiliate registration status

- The contractor has one or more subcontractors, and each subcontractor has informed the contractor that, as of the date of this certification, it does not have any affiliates.
- The contractor has one or more subcontractors, and each subcontractor has informed the contractor of whether or not, as of the date of this certification, it has any affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made. Each subcontractor informing the contractor that it has one or more affiliates having made sales in excess of the \$300,000 threshold during such periods has further informed the contractor that each such affiliate is registered for New York State and local sales and compensating use tax purposes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed on Schedule A of this certification the name, address and identification number of each affiliate exceeding the \$300,000 sales threshold during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.
- The contractor has one or more subcontractors, and each subcontractor has informed the contractor that, as of the date of this certification, it has no affiliate having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.

Sworn to this 9th day of September, 20 05



Chief Financial Officer
(title)

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF New York)

SS.:

COUNTY OF Nassau)

On the day 9th of September in the year 2005, before me personally appeared Alan F. King,

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 319 Peachtree Drive, East Norwich,

Town of Oyster Bay,

County of Nassau,

State of New York; and further that:

[Mark an X in the appropriate box and complete the accompanying statement.]

(If an individual): he executed the foregoing instrument in his/her name and on his/her own behalf.

(If a corporation): he is the Chief Financial Officer 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 partner 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 purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

(If a limited liability company): he is a duly authorized member of the LLC, the limited liability company described in said instrument; that he is authorized to execute the foregoing instrument on behalf of the limited liability company 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 limited liability company as the act and deed of said limited liability company.

Notary Public [Redacted Signature]

SHERRY M. OBLAS
NOTARY PUBLIC, State of New York
No. 01085042229
Qualified in Kings County
Commission Expires April 17, 2007

Registration No.

Affirming Alan King's signature on page 3 of 7 who is personally known to me.

Schedule A — List of affiliates, subcontractors, and affiliates of subcontractors

A Relationship to Contractor	B Name	C Address	D ID Number	E Sales Tax ID Number	F Proof of Registration

Column A – Enter **C** if the contractor; do not complete columns C, D, and E. Enter **A** if an affiliate of the contractor; **S** if a subcontractor; or **SA** if an affiliate of a subcontractor, and complete columns B through F.

Column B – Name - If person is a corporation or limited liability company, enter the exact legal name as registered with the NY Department of State. If person is a partnership or sole proprietor, enter the name of the partnership and each partner’s given name, or the given name(s) of the owner(s), as applicable. If person has a different DBA (doing business as) name, enter that name as well.

Column C – Address - Enter the street address of person’s principal place of business. Do not enter a PO box.

Column D – ID number - Enter the federal identification number assigned to the person or person’s business, as applicable.

Column E – Sales tax ID number - Enter only if different from federal ID number in column D.

Column F – Enter **CA** if a paper copy of the certificate of authority is attached; or **RC** if person is registered with DTF and has confirmed this status with DTF.

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 897, 1098, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(o)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

Instructions

General Information

On August 20, 2004, New York State enacted section 5-a of the Tax Law requiring persons awarded contracts valued at more than \$15,000 with state agencies, public authorities or public benefit corporations to certify that they, their affiliates, their subcontractors, and the affiliates of their subcontractors have a valid certificate of authority to collect New York State and local sales and compensating use taxes. A contractor, affiliate, subcontractor or affiliate of a subcontractor must be certified as having a valid certificate of authority if such person makes, or has made, aggregate sales delivered within New York State of more than \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made. A contractor must use Form ST-220, *Contractor Certification*, to make this certification before the contract may be approved by the Office of the State Comptroller (OSC), or other contract approver if OSC is not required to approve the contract.

This statute applies to contracts resulting from solicitations to purchase issued by governmental entities on or after January 1, 2005. In the case of contracts resulting from issuance of an invitation for bid (IFB) or a request for proposal (RFP), the statute would apply if the IFB or RFP was first issued on or after January 1, 2005. The statute would not apply if the bid document was first issued before January 1, 2005, even if the bid document was amended, or the resulting contract was awarded, approved, amended, or extended after January 1, 2005.

The statute does not apply to purchases from preferred sources. For additional information, please see Publication 222, *Questions and Answers Concerning Tax Law Section 5-a*.

Definition of terms associated with section 5-a

The following is a partial list. Please see Publication 222 for additional information.

A *contractor* is defined as a person awarded a contract by a covered agency.

The term *person* is defined as any entity in business for either profit or not-for-profit purposes and can refer to an individual, partnership, limited liability company, society, association, joint stock company, or corporation.

A *covered agency* is defined as New York State or any department, board, bureau, commission, division, office, council or agency of New York State; public authorities and public benefit corporations. The State Legislature, the Judiciary, Department of Law, Office of State Comptroller, State Education Department, State University of New York and the senior colleges of City University of New York are included in this definition.

An *affiliate* is an entity which, through stock ownership or any other affiliation, directly, indirectly or constructively, controls another entity, is controlled by another entity, or is, along with another entity, under the control of a common parent company.

A *subcontractor* is an entity specifically engaged by a contractor or another subcontractor to provide commodities or perform services necessary to allow a contractor to fulfill a particular contract with a covered agency.

Commodities means, other than with respect to contracts for State printing, material goods, supplies, products, construction items or other standard articles of commerce other than technology which are the subject of any purchase or other exchange.

Tangible personal property means physical personal property, of any nature, that has a material existence and is perceptible to the human senses. Tangible personal property includes, without limitation: (1) raw materials, such as wood, metal, rubber and minerals; (2) manufactured items, such as gasoline, oil, diesel motor fuel and kero-jet fuel, chemicals, jewelry, furniture, machinery and equipment, parts, tools, supplies, computers, clothing, motor vehicles, boats, yachts, appliances, lighting fixtures, building materials; (3) pre-written off-the-shelf software; (4) artistic items such as sketches, paintings, photographs, moving picture films and recordings; (5) animals, trees, shrubs, plants and seeds; (6) bottled water, soda and beer; (7) candy and confections; (8) cigarettes and tobacco products; (9) cosmetics and toiletries; (10) coins and other numismatic items, when purchased for purposes other than for use as a medium of exchange; (11) postage stamps, when purchased for purposes other than mailing; and (12) precious metals in the form of bullion, ingots, wafers and other forms.

Completing Form ST-220

Identification Information

Contractor name: Enter the exact legal name of the person or entity who is contracting to provide commodities or services to a covered agency of New York State. This is the name registered with the New York Department of State.

Contractor's principal place of business: Enter a street address, not a PO box number.

Mailing address: Enter the address where contractor receives mail, if different than the principal place of business.

Contracting state agency: Enter the state agency awarding the contract to the contractor.

Certification statement: If the contractor is a corporation, the statement must be completed by the president, vice president, treasurer, assistant treasurer, chief accounting officer, or other officer authorized by the corporation. If the contractor is a partnership, the statement must be completed by a partner or person authorized by the partnership. If the contractor is a limited liability company, the statement must be completed by a member of the LLC and be authorized by the LLC.

Part I - Contract services not pursuant to Tax Law section 5-a

If the services to be performed under the contract are not services within the meaning of Tax Law section 5-a, mark an X. You do not have to complete Parts II through V. You must sign and have the certification acknowledged.

For procurement law purposes, *services* means, other than with respect to contracts for State printing, the performance of a task or tasks and may include a material good or a quantity of material goods, and which is the subject of any purchase or other exchange. For procurement law purposes, technology is a service. The term *services* for procurement law purposes does not apply to contracts for architectural, engineering or surveying services, or to contracts with not-for-profit organizations approved in accordance with Article eleven-B of the State Finance Law.

The term *taxable services* for New York State and local sales and compensating use tax law purposes includes, but is not limited to: 1) providing information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other

manner; 2) processing, assembling, fabricating, printing or imprinting tangible personal property furnished by a customer who did not purchase the tangible personal property for resale; 3) installing, maintaining, servicing, or repairing tangible personal property that is not held for sale by the purchaser of the service in the regular course of business (for example, servicing automobiles, installing appliances, and repairing radio and television sets); 4) storing tangible personal property that is not being held for sale; 5) renting safe deposit boxes, vaults, and similar storage facilities; 6) maintaining, servicing, or repairing real property both inside and outside buildings (for example, cleaning, painting, gardening, snow plowing, trash removal, and general repairs); 7) providing parking, garaging, or storing services for motor vehicles; 8) interior decorating and designing; 9) protective or detective services; and 10) entertainment or information services provided by means of telephony or telegraphy.

Parts II through V

If the contract is covered under Tax Law section 5-a, you must mark an **X** in at least one box in each of these parts. You must also sign and have the certification acknowledged, and complete Schedule A.

Schedule A

Column A – Relationship to the contractor

The contractor should enter a **C**. It is not necessary for the contractor to complete columns C through E since this information has been provided on page 1.

If the person listed in column B is an affiliate of the contractor, enter an **A**; if a subcontractor, enter an **S**; if an affiliate of a subcontractor, enter **SA**.

Column B – Name

Enter the exact legal name as registered with the New York Department of State of each corporation or limited liability company. If the person is a partnership or sole proprietor, enter each partner's or the owner's given name. If the person uses a different name or DBA (doing business as), enter that name as well.

Column C – Address

Enter the street address of the person's principal place of business. Do not enter a PO box.

Column D – ID number

If the person listed in column B is an individual, enter the social security number of that person. Otherwise enter the employer identification number (EIN) assigned to the person.

Column E – Sales tax ID number

Enter the sales tax identification number, if different from the federal identification.

Column F – Proof of registration

Enter **CA** and attach a copy of the certificate of authority for the person.

If the certificate of authority is not readily available and if the person is registered with the Department of Taxation and Finance and has confirmed this status with the DTF, enter **RC**.

Return a signed and acknowledged original Form ST-220, and a copy, with the contract to the procuring state agency.