



New York State Department of Civil Service

Employee Benefits Division

AGREEMENT #C000607

Between

**NEW YORK STATE
DEPARTMENT OF CIVIL SERVICE**

And

DAVIS VISION, INC.

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE AND
DAVIS VISION, INC.
NYS VISION PLAN SERVICES
AGREEMENT #C000607**

THIS Agreement is entered into by and between New York State Department of Civil Service (“Department” or “DCS”), having its principal office at the Alfred E. Smith State Office Building, Albany, NY, 12239 and Davis Vision, Inc. (“Contractor” or “The Contractor”), a corporation authorized to do business in the State of New York with a principal place of business located at 159 Express Street, Plainview, New York 11803, and collectively referred to as “the Parties.”

WITNESSETH

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

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

WHEREAS, on March 1, 2011, the Department of Civil Service issued a Request for Proposal (RFP) entitled, “NYS Vision Plan Services,” to secure the services of a qualified organization to provide Vision Plan services as defined in the RFP; and

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

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

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

ARTICLE I: DEFINITION OF TERMS

- 1.1.0 Affiliate** means a business concern owned or controlled in whole or in part by another concern or is owned or controlled in whole or in part by another concern.
- 1.2.0 Business Day(s)** means every Monday through Friday, except for days designated as business holidays by the Contractor and approved as such by DCS prior to January 1st of each Calendar year.
- 1.3.0 Calendar Year/Annual** means a period of 12 months beginning with January 1 and ending with December 31.
- 1.4.0 Call Center Hours** means between the hours of 8:00 a.m. until 11:00 p.m. ET, Monday through Friday, between the hours of 9:00 a.m. to 4:00 p.m. ET on Saturday and between the hours of 12:00 p.m.– 4:00 p.m. ET on Sunday.
- 1.5.0 Child(ren)** means children under 25 years of age, including natural children, legally adopted children, children in a waiting period prior to finalization of adoption, Enrollee stepchildren and children of the Enrollee's domestic partner. Other children who reside permanently with the Enrollee in the Enrollee's household and are chiefly dependent upon the Enrollee are also eligible, subject to a Statement of Dependence and documentation.
- 1.6.0 Contractor** means successful Offeror selected as a result of the evaluation of Offerors' Proposals submitted in response to the RFP and who executes an Agreement with the Department to provide Program Services.
- 1.7.0 Copayment** means the amount an Enrollee or Dependent is required to pay for covered Vision services as specified by the benefit design of the Plan.

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

laser vision benefits to Enrollees and to accept the Participating Provider fee schedule for covered laser vision correction services.

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

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

ARTICLE II: AGREEMENT DURATION AND AMENDMENTS

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

approval of the Agreement with all other contractual obligations to begin on January 1, 2012 through and including December 31, 2016, and subject to the termination provisions contained herein.

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

ARTICLE III: INTEGRATION

3.1.0 This Agreement, including all Exhibits, copies of which are attached hereto and incorporated by reference, constitutes the entire Agreement between the Parties. All prior Agreements, representations, statements, negotiations, and undertaking are superseded hereby.

3.2.0 All Statements made by the DCS shall be deemed to be representations and not warranties.

ARTICLE IV: DOCUMENT INCORPORATION AND ORDER OF PRECEDENCE

4.1.0 The Agreement consists of:

4.1.1 The body of the Agreement (that portion preceding the signatures of the Parties in execution) and any amendments thereto;

4.1.2 Appendix A – Standard Clauses for all New York State Contracts;

4.1.3 Appendix B – Standard Clauses for all Department of Civil Service Contracts;

4.1.4 Appendix C – Third Party Connection and Data Exchange Agreement

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

4.1.5a Exhibit A: which includes the MacBride Act Statement; and the Non-Collusive Bidding Certification;

4.1.5b Exhibit B: the Request for Proposals entitled, "NYS Vision Plan," dated March 1, 2011 and Exhibit B-1, the official DCS response to questions raised concerning the RFP;

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

ARTICLE V: LEGAL AUTHORITY TO PERFORM

- 5.1.0 Contractor agrees that it shall perform its obligations under this Agreement in accordance with all applicable Federal and NYS Laws, rules and regulations, policies and/or guidelines now or hereafter in effect. The Contractor represents that it possesses adequate legal authority to perform the tasks of this agreement in accordance with the terms and conditions of the Agreement.
- 5.2.0 The Contractor shall maintain appropriate corporate and/or legal authority, which shall include but is not limited to the maintenance of an administrative organization capable of delivering the Program Services in accordance with the Agreement and the authority to do business in the State of New York or any other governmental jurisdiction in which the Program Services are to be delivered.
- 5.3.0 The Contractor shall provide the Department with immediate notice in writing of the initiation of any legal action or suit which relates in any way to the Agreement, or which may affect the performance of Contractor's duties under the Agreement.

ARTICLE VI: PROGRAM SERVICES

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

All Program Services shall be provided in accordance with the New York State Civil Service Law and its implementing regulations, and other NYS and Federal Law as may be applicable. In addition, the Contractor shall deliver the Program Services in such a manner so as to comply with all provisions of this Agreement. The Contractor may provide certain services through key subcontracts with the prior review and approval of DCS. Each subcontract entered into with a corporate entity separate from the Contractor for the purpose of delivering Program Services must be maintained throughout the term of the Agreement unless such change is approved in writing by DCS. DCS must be explicitly identified as the intended beneficiary of the key subcontract. The

-
- 4.1.5c** Exhibit C: the Contractor's Proposal and Exhibit C-1: the Contractor's response to questions raised in the Management Interview and related materials clarifying the contractor's proposal, dated June 2, 2011;
 - 4.1.5d** Exhibit D, the Schedule of Participating Provider Fees;
 - 4.1.5e** Exhibit E, the Schedule of Monthly Administrative Fees and Communications Fee;
 - 4.1.5f** Exhibit F, the Schedule of Indemnity Reimbursement Fees; and
 - 4.1.5g** Exhibit G, Summary of Benefit Variances by Employee Group;
- 4.1.6** In the event of any inconsistency in, or conflict among, the document elements of the Agreement identified above, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the following order:
- 4.1.6a** First, Appendix A – Standard Clauses for all New York State contracts;
 - 4.1.6b** Second, Appendix B – Standard Clauses for all Department of Civil Service contracts;
 - 4.1.6c** Third, Appendix C – Third Party Connection and Data Exchange Agreement;
 - 4.1.6d** Fourth, any Amendments to the body of the Agreement;
 - 4.1.6e** Fifth, the body of the Agreement;
 - 4.1.6f** Sixth, Exhibit B – the Request for Proposals entitled, "NYS Vision Plan Services," dated March 1, 2011 and Exhibit B-1, the official DCS response to questions raised concerning the RFP; and
 - 4.1.6g** Seventh, Exhibit C – the Contractor's Proposal and Exhibit C-1, the Contractor's response to questions raised in the Management Interview and related materials clarifying the Contractor's proposal, dated June 2, 2011; and
 - 4.1.6h** Eighth, Exhibit D, the Schedule of Participating Provider Fees; Exhibit E, the Schedule of Monthly Administrative Fees and Communications Fee; Exhibit F, the Schedule of Indemnity Reimbursement Fees; and Exhibit G, Summary of Benefit Variances by Employee Group.

Contractor must maintain significant financial, legal, and audit oversight of any of its Key Subcontractors. The Contractor remains fully responsible for all services and actions performed under this Agreement. The Contractor shall submit all key subcontracts to DCS for its approval. The Contractor shall submit all such key subcontracts with no redactions to the Department before execution for its review and approval. **(Note: Costs/Fees for all services required under this Agreement shall be included in the Contractor's Monthly Administrative Fee.)**

6.2.0 Plan Implementation

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

6.3.0 Account Team

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

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

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

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

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

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

6.4.0 Customer Service

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

6.4.1 Providing Members and Providers 24-hour access, except for regularly scheduled maintenance, to information on vision benefits and eligibility related to the NYS Vision Plan through a nationwide toll-free number.

6.4.2 Maintaining a call center located in the United States employing an adequate staff of fully trained customer service representatives, and supervisors available between the hours of 8:00 a.m. and 11:00 p.m. ET, Monday through Friday, between the hours of 9:00 a.m. and 4:00 p.m. ET on Saturday, and between the hours of 12:00 p.m. and 4:00 p.m. on Sunday, except for legal holidays observed by the State. These hours may be adjusted based on actual call volume by mutual agreement between the Department and the Contractor. Customer service representatives must be able to timely respond to questions, complaints and inquiries, including but not limited to, Plan benefits, Participating Provider and Laser Vision Correction Participating Provider locations, eligibility and claims status.

6.4.3 Customer service staff must use an integrated system to log and track all Member calls. The system must create a record of the Member contacting the call center, the call type and all customer service actions and resolutions.

6.4.4 Maintaining a back-up telephone system to be utilized in the event the primary telephone system fails or is unavailable.

6.4.5 Developing and maintaining a secure online customized website for Enrollees, 24 hours a day, 7 days a week, except for regularly scheduled maintenance, throughout the term of the Agreement, which will provide access to information including, but not limited to:

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

6.5.0 Member Communication Support

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

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

- 6.5.5** Developing, printing and mailing to Enrollees' homes notification of benefit modifications and any other communications materials that may be required by the Department during the term of the Agreement, in cooperation with and subject to the approval of the Department and in accordance with Article X; Paragraph 10.5.0 of the Agreement.
- 6.5.6** Accounting and paying for all development, production and mailing costs incurred to disseminate Plan communications materials to Enrollees and Health Benefits Administrators.
- 6.5.7** The Department shall:
- 6.5.7a** Retain editorial control over all aspects of the Plan material, including final determination on the content and tone. The Department will provide expeditious final approval of all print and/or other materials developed for the Plan;
 - 6.5.7b** Make available, if possible, any records or information which the Contractor clearly needs to design and implement effective communication strategies; and
 - 6.5.7c** Assist the Contractor as necessary in communicating with Members and Providers but at no additional expense to the State, except as provided in Article X, Paragraph 10.5.0 of the Agreement
- 6.5.8** The Contractor shall retain no proprietary or literary rights with respect to communication material developed solely for the Plan and shall execute any assignment found necessary to release proprietary rights.
- 6.5.9** Attending health benefit fairs, conferences, and benefit design information sessions, located in New York State, at the request of the Department.

6.6.0 Enrollment Management

The Selected Contractor will be responsible for the maintenance of an accurate, complete and up-to-date enrollment file based on information provided by the Department. This enrollment file shall be used by the Contractor to process claims, provide customer service, and produce management reports. The Contractor is required to provide enrollment management services including, but not limited to:

6.6.1 Initial Testing

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

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

6.6.2 Providing an enrollment system capable of receiving secure enrollment transactions and having all transactions fully loaded to the claims processing system within thirty-six (36) hours of release of a retrievable file by the Department. The Contractor shall immediately notify the Department of any delay in loading enrollment transactions. In the event the Contractor experiences a delay due to the quality of the data supplied by the Department, the Contractor shall immediately load all records received (that meet the quality standards for loading) within thirty-six (36) hours of their release, as required. The Contractor must have a process in place to correct any records that cannot be loaded programmatically in a timely manner. The Department will transmit enrollment transactions changes to the Contractor in an electronic format weekly. The format of these transactions will be in EDI Benefit Enrollment and Maintenance transaction set, utilizing an ANSI x.12 834 transaction set in the format specified by the Department. The Contractor must also have the capability to receive any special update files from the Department containing eligibility additions and deletions, including emergency updates, if required;

6.6.3 Meeting the administrative requirements for National Medical Support Notices. A child covered by a Qualified Medical Child Support Order (QMCSO), or the child's custodial parent, legal guardian, or the provider of services to the child, or a State agency to the extent assigned the child's rights, may file claims and the Contractor must make payment

for covered benefits or reimbursement directly to such party. The Contractor shall store this information in their system so that any claim payments or any other plan communication distributed by the Contractor, including access to information on the Contractor's website would go to the person designated in the QMCSO;

- 6.6.4** Ensuring the security of all enrollment information as well as the security of a HIPAA compliant computer system in order to protect the confidentiality of Member data contained in the enrollment file. The Offeror must have an Information Security Plan (ISP) acceptable to the Department in place on the effective date of the Agreement, which states all of the security policies and procedures for the protection of data, equipment and facilities, including receipt of and transmission of data in accordance with Department standards, policies and procedures. The ISP must, at a minimum conform to the requirements of the Department of Civil Service Information Security Policy; and agree to the policies, terms and conditions stated in this Agreement and Appendices A, B and C. Any transfers of enrollment data within the Contractor's system or to external parties must be completed via a secured process;
- 6.6.5** Cooperating fully with any Department initiatives to use new technologies, processes, and methods to improve the efficiencies of maintaining enrollment data including any enrollment file conformance testing requested during the course of the Agreement.
- 6.6.6** Maintaining a read only connection to the NYBEAS enrollment system for the purpose of providing the Contractor's staff with access to current Program enrollment information. Contractor's staff must be available to access enrollment information through NYBEAS, Monday through Friday, from 9:00 a.m. to 5:00 p.m., with the exception of State holidays;
- 6.6.7** Providing a back-up system in the event that the primary enrollment system fails or cannot be accessed so that there is no interruption of service to Members.
- 6.6.8** Verifying dependent child full-time student status for all employee groups (except for those covered by SEHP) for Dependents age nineteen through twenty-five, prior to authorization of Vision Plan services. Student status is not maintained in NYBEAS. Dependent children of Employees who are in SEHP are covered up to age twenty-six regardless of student status.

6.7.0 Claims Processing

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

- 6.7.1** Verifying that the Plan's benefit designs have been loaded into the system appropriately to adjudicate and calculate cost sharing and other edits correctly;
- 6.7.2** Accurate and timely processing of all claims submitted under the Plan in accordance with the benefit design(s) applicable to the Enrollee at the time the claim was incurred as specified to the Contractor by the Department;
- 6.7.3** Charging the Plan consistent with the Contractor's proposed pricing quotes;
- 6.7.4** Developing and maintaining claim payment procedures, guidelines, and system edits that guarantee accuracy of claim payments for covered services only;
- 6.7.5** Maintaining records necessary to support claim payments, legal responsibilities, and reporting, and providing direct access to all NYS Vision Plan records for State audit requests;
- 6.7.6** Utilizing the auditing tools and performance measures proposed by the Contractor to identify potential fraud and abuse by Participating and Laser Vision Correction Participating Providers;
- 6.7.7** Maintaining claims histories for twenty-four (24) months online and archiving older claim histories for up to six (6) years with procedures to easily retrieve and load claim records;
- 6.7.8** Reversing all attributes of claim records processed in error or due to fraud or abuse and crediting the Plan for all costs associated with such claim;
- 6.7.9** Maintaining the security of the claim files and ensuring HIPAA compliance;
- 6.7.10** Agreeing that all claim data is the property of the State. Upon request of the Plan, the Contractor shall share appropriate claims data with other Department consultants and contractors for various program analysis. The Contractor cannot sell, release, or make the data available to third parties in any manner without the prior consent of the Department.

- 6.7.11 Maintaining a back-up system and disaster recovery system for processing claims in the event that the primary claims payment system fails or is not accessible;
- 6.7.12 Analyzing and monitoring claim submission to identify errors, fraud or abuse and reporting to the Department in a timely fashion in accordance with a Department approved process. The Plan will be charged for only accurate (i.e., the correct dollar amount) claims payments of covered expenses. The Contractor will credit the Plan the amount of any overpayment regardless of whether any overpayments are recovered from Provider and/or Enrollees in instances where a claim is paid in error due to Contractor error or due to fraud or abuse. In cases of overpayments resulting from errors found to be the responsibility of the Department, the Contractor shall use reasonable efforts to recover any overpayment and credit them to the Plan upon receipt; however, the Contractor is not responsible to credit amounts that are not recovered. The Contractor shall report fraud and abuse to the appropriate authorities.
- 6.7.13 Processing Enrollee submitted claims using the non-network fee schedule set forth in Exhibit F.

6.8.0 Network Management

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

6.8.1 Participating Provider Network

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

- 6.8.1a Ninety-eight (98) percent of Enrollees in urban areas will have at least one (1) Participating Provider within five (5) miles of an Enrollee's home;
- 6.8.1b Ninety-eight (98) percent of Enrollees in suburban areas will have at least one (1) Participating Provider within fifteen (15) miles of an Enrollee's home; and
- 6.8.1c Ninety-eight (98) percent of Enrollees in rural areas will have at least one (1) Participating Provider within thirty (30) miles of an Enrollee's home.

6.8.1d These standards are based on the distance, in miles, from an Enrollee's home (zip code) to the nearest Participating Provider location. Urban, suburban and rural are based on US Census Department classifications, as determined by GeoAccess.

6.8.2 Laser Vision Correction Participating Provider Network

6.8.2a The Contractor must develop and maintain a regional network of qualified, credentialed ophthalmologists that provides reasonable access to Members to provide laser vision correction services through both a covered benefit and discount program. Reasonable access for the Laser Vision Correction Participating Provider Network is defined as the following:

6.8.2a(1) Ninety (90) percent of Enrollees in urban areas will have at least one (1) Laser Vision Correction Participating Provider within ten (10) miles of an Enrollee's home;

6.8.2a(2) Ninety (90) percent of Enrollees in suburban areas will have at least one (1) Laser Vision Correction Participating Provider within twenty-five (25) miles of an Enrollee's home;

6.8.2a(3) Eighty (80) percent of Enrollees in rural areas will have at least one (1) Laser Vision Correction Participating Provider within fifty (50) miles of an Enrollee's home;

6.8.2b The Contractor must effectively communicate the availability of the Laser Vision Correction Network to eligible Members, in addition to notifying them of their benefit and how to access their benefit. Eligible Members are eligible to use their laser vision correction benefit once every five years.

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

6.8.3 Participating Provider and Laser Vision Provider Credentialing

6.8.3a The selected Contractor must assure its network is credentialed in accordance with all applicable federal and state laws, rules and regulations.

6.8.3b The Contractor must credential Participating Providers and Laser Vision Correction Participating Providers to ensure the quality of the network. The Contractor must also credential Participating Providers and Laser Vision Correction Providers in a timely manner and shall have an effective process by which to confirm Participating Provider's and Laser Vision Correction Participating Provider's continuing compliance with credentialing standards.

6.8.4 Participating Provider and Laser Vision Correction Provider Contracting

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

6.8.4a Ensuring that all Participating Providers and Laser Vision Correction Participating Providers contractually agree to and comply with all of the Plan's requirements and benefit design specifications.

6.8.4b Ensuring that Participating Providers and Laser Vision Correction Participating Providers accept as payment-in-full the Contractor's reimbursement, plus copayments and upgrade fees, as applicable, for covered services.

6.8.5 Network Administration and Quality Assurance

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

6.8.5a Developing and distributing communication materials to Participating Providers and Laser Vision Correction Participating Providers introducing the Plan and describing changes, when necessary;

6.8.5b Working with Participating Providers and Laser Vision Correction Participating Providers to resolve Enrollee billing disputes and complaints about the quality of services or eyewear received from a Participating Provider, including on-site audits of Participating Provider facilities, as needed; and

6.8.5c Notifying the Department in writing of any decision where a Participating Provider or Laser Vision Correction Participating Provider is suspended or terminated from participation as a result of serious quality deficiencies.

6.9.0 Reporting

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

6.9.1 Developing, in conjunction with the Department, standard electronic management, financial, and utilization reports required by the Department for its use in the review, management, and analysis of the Plan. These reports must tie to the amounts billed to the Plan. The final format of reports is subject to the Department review and approval;

6.9.2 Providing Ad Hoc reports and other data analysis at no additional cost to the State. The exact format, frequency and due dates for such reports shall be specified by the Department. Information required in the Ad Hoc Reports may include but is not limited to providing:

6.9.2a Forecasting and trend analysis

6.9.2b Benefit design Modeling

6.9.2c Reports to meet clinical program review needs

6.9.3 Supplying reports in paper format and/or in an electronic format (Microsoft Access, Excel, Word) as determined by the Department including but not limited to the reports listed in Article XIII of this Agreement.

6.10.0 Consulting

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

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

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

6.11.0 Frame Selection and Lenses

- 6.11.1 The Contractor shall be responsible for ensuring that Participating Providers maintain a varied and contemporary selection of Plan frames, including but not limited to styles in metal or plastic for men, women and children, half-eye styles, protective sport goggles and designer models. Plan frames must be available at three separate benefit levels, Basic, Standard, and Enhanced. The Contractor must contractually require Participating Providers to stock a minimum of [80] Basic frame styles, [86] Standard frame styles and [56] Enhanced frame styles. The Contractor may not count a different size or different color of the same frame when assessing compliance with the minimum frame selection.
- 6.11.2 The Contractor is responsible for ensuring that all Participating Providers will dispense all covered lens types and lens options, including combination of two or more lens types and options.
- 6.11.3 The Contractor must provide a one-year unconditional warranty against breakage for all Plan frames and lenses that are fabricated in laboratories at manufacturing companies that are either a parent or subsidiary company of the Contractor, as well as national retailer frames dispensed at Participating Provider locations where the Contractor's frame collection is not displayed.

6.12.0 Contact Lens Selection

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

6.13.0 Occupational Vision Program

- 6.13.1** The Contractor must develop sound eligibility criteria for the Occupational Vision Program that ensures appropriate dispensing of eyewear for occupational vision needs, in accordance with the negotiated benefit design by employee group. The eligibility criteria includes, but is not limited to:
- 6.13.1.a** The prescription must have at least a 0.5 diopter difference;
 - 6.13.1.b** The segment height must have a 5.0 mm change; or
 - 6.13.1.c** The spectacle lens type must be different (i.e., single vision to bifocal lenses); or
 - 6.13.1.d** Sunglasses for certain Employees, as noted on Exhibit G, Summary of Benefit Variances by Group;
- 6.13.2** The Contractor must communicate Occupation Vision Program eligibility criteria to Participating Providers and monitor compliance with the program.
- 6.13.3** The Contractor must work with the Department and the State Police to develop a procedure to order and fabricate prescription lenses for insertion into respirators.

6.14.0 Medical Exception Program

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

6.15.0 Upgrade Program

- 6.15.1 The Contractor must communicate the Upgrade Program requirements and pricing methodology to Participating Providers and ensure that they properly administer the Program.
- 6.15.2 The Contractor must provide a minimum discount off of retail pricing for upgrade selections that are not a covered benefit for any Employee Group covered under the Plan. The Contractor must set the Upgrade Program surcharges for selections that are a covered benefit for one or more Employee Groups under the Plan equal to the fee paid by the Plan, as set forth by the Contractor in Exhibit D of this Agreement.

ARTICLE VII: PERFORMANCE GUARANTEES

The Parties agree that the following guarantees and the corresponding penalty(ies) for failure to meet each guarantee shall be implemented effective January 1, 2012. The Contractor acknowledges and agrees that failure to perform the Service Features in such a manner which either meets or exceeds any and/or all of the Performance Guarantee(s) as set forth in this Article and/or fails to make any payment(s) of any such credit amounts for such failure to meet any Performance Guarantee(s) does not relieve the Contractor of

the performance of the activities, duties and obligations as otherwise set forth in the Agreement. The Contractor shall report to DCS on a quarterly basis its level of compliance with these guarantees, as specified in 13.2.1 of this Agreement.

Performance credit amounts due from the Contractor to DCS for failure to perform any Service Feature at the Guarantee level as set forth above, and audit credit amounts, as determined pursuant to Article XV of this Agreement, shall be made at the time and in such amounts as determined by DCS to be final. Upon such determination, DCS shall notify the Contractor, in writing, and the Contractor shall deduct such amounts from the next applicable Monthly Payment Summary report.

7.1.0 Implementation and Start-Up Guarantees and Credit Amount

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

7.1.1a its contracted Participating Provider Network that meets the access standard set forth in Section 6.8.1 of this Agreement;

7.1.1b its contracted Laser Vision Correction Participating Provider Network that provides reasonable access as set forth in Section 6.8.2 of this Agreement;

7.1.1c a fully operational call center providing all aspects of customer service as set forth in Section 6.4.0 of this Agreement;

7.1.1d a fully operational claims processing system that accurately reimburses claims in accordance with Plan provisions as set forth in Section 6.7.0 of this Agreement; utilizes accurate enrollment and eligibility data provided by the Department to accurately pay claims for eligible Enrollees/Dependents consistent with the Plan benefit design;

7.1.1e a fully functioning customized Plan website with a secure dedicated link from the Department's access to the specific website requirements as set forth in Section 6.4.5 of this Agreement.

7.1.2 Performance Guarantee: The Offeror's quoted percent to be credited for each day that all implementation and Start-Up requirements are not met is sixty-five percent (65 %) of the Monthly Administrative Fees (prorated on a daily basis).

7.2.0 Participating Provider Access Guarantee and Credit Amount

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

7.2.1a Ninety-eight (98%) of Enrollees in urban areas of New York State will have access to at least one (1) Participating Provider within five (5) miles;

7.2.1b Ninety-eight (98%) of Enrollees in suburban areas of New York State will have access to at least one (1) Participating Provider within fifteen (15) miles, and

7.2.1c Ninety-eight (98%) of Enrollees in rural areas of New York State will have access to at least one (1) Participating Provider within thirty (30) miles;

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

These standards are based on the distance, in miles, from an Enrollee's home zip code to the nearest Participating Provider location. Urban, suburban and rural are based on US Census Department classifications, as determined by GeoAccess. Contractors may propose Performance Guarantees with better access than the minimums, but the access must follow the same structure as the above minimum (i.e., access for each of the three (3) areas based on the NYS Vision Plan population in New York State).

7.2.2 Performance Guarantee:

7.2.2a The Contractor's quoted amount to be credited against the Contractor's Monthly Administrative Fee is \$6,600 for each .01 to 1.0% below the Contractor's proposed standard of ninety-eight percent (98%) for any Calendar Year in which the Participating Provider Access - for Urban Areas of New York State Performance Guarantee, as calculated on a Calendar Year basis, is not met by the Contractor.

7.2.2b The Contractor's quoted amount to be credited against the Contractor's Monthly Administrative Fee is \$6,600 for each .01 to 1.0% below the Contractor's proposed standard of ninety-eight percent (98%) for any Calendar Year in which the Participating Provider Access for Suburban Areas of New York State Performance Guarantee, as calculated on a Calendar Year basis, is not met by the Contractor.

7.2.2c The Contractor's quoted amount to be credited against the Contractor's Monthly Administrative Fee is \$6,600 for each .01 to 1.0% below the Contractor's proposed standard of ninety-eight percent (98%) for any Calendar Year in which the Participating Provider Access for Rural Areas of New York State Performance Guarantee, as calculated on a Calendar Year basis, is not met by the Contractor.

7.3.0 Enrollment Management Guarantees and Credit Amount

7.3.1 Service Level Standard: The Program's service level standard requires that one hundred percent (100%) of all Plan enrollment records that meet the quality standards for loading must be loaded into the Contractor's enrollment system within thirty-six (36) hours of release by the Department.

7.3.2 Performance Guarantee: The Offeror's quoted amount to be credited against the Monthly Administrative Fee for each twenty-four (24) hour period beyond thirty-six (36) hours from the release by the Department that one hundred percent (100%) of the Program enrollment records that meet the quality standards for loading is not loaded into the Offeror's enrollment system, is \$650.

7.4.0 Turnaround Time for Receiving Eyewear and Credit Amount

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

7.4.2 Performance Guarantee: The Offeror's quoted amount to be credited against the Offeror's Monthly Administrative Fee for each .01 to 1.0% below the standard of ninety-five percent (95%) of all orders from a Participating Provider for covered eyewear that are not available to the Member within seven (7) Calendar Days of placing the order, calculated on an annual calendar year basis, is \$625.

7.5.0 Call Center Telephone Guarantees and Credit Amount

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

7.5.1 Call Center Availability

7.5.1a Service Level Standard: The Plan's service level standard requires that the Contractor's telephone line will be operational and available to Members and Providers at least ninety-nine and ninety-nine hundredths percent (99.99%) of the Contractor's proposed customer service telephone line availability (minimum scheduled time between the hours of 8:00 a.m. and 11:00 p.m. ET, Monday through Friday; between the hours of 9:00 a.m. and 4:00 p.m. ET on Saturday, and between the hours of 12:00 p.m. and 4:00 p.m. on Sunday, except for legal holidays observed by the State), calculated on an annual calendar year basis. The Contractor shall measure telephone system availability monthly and report the results to the Department quarterly;

7.5.1b Performance Guarantee: The Offeror's quoted amount to be credited against the Monthly Administrative Fee for each .01 to 1.0% below the standard of the Contractor's proposed standard of ninety-nine and ninety-nine hundredths percent (99.99 %) that the Offeror's telephone line is not operational and available to Members and Providers during the Offeror's Call Center Hours, as calculated on a Calendar Year basis, is \$6,600.

7.5.2 Call Center Telephone Response Rate

7.5.2a Service Level Standard: The Plan's service level standard requires that at least ninety percent (90%) of the incoming calls to the Contractor's telephone line will be answered by a customer service representative within thirty (30) seconds. Response time is defined as the time it takes incoming calls to the Contractor's telephone line to be answered by a customer service representative. The telephone response time shall be measured monthly and reported to the Department quarterly;

7.5.2b Performance Guarantee: The Offeror's quoted amount to be credited against the Monthly Administrative Fee for each .01 to 1.0% below the standard of ninety percent (90%) that incoming calls to the Offeror's customer service toll-free line that are not answered by a customer service representative within thirty (30) seconds, as calculated on a Calendar Year basis, is \$6,600.

7.5.3 Telephone Abandonment Rate

7.5.3a Service Level Standard: The Plan's service level requires that the percentage of incoming calls in which the caller disconnects prior to the call being answered by a customer service representative will not exceed two percent (2%). The telephone abandonment rate shall be measured monthly and reported to the Department quarterly;

7.5.3b Performance Guarantee: The Offeror's quoted amount to be credited against the Monthly Administrative Fee for each .01 to 1.0% of incoming calls to the Offeror's telephone line in which the caller disconnects prior to the call being answered by a customer service representative in excess of the standard of two percent (2%), as calculated on a Calendar Year basis, is \$6,600.

7.5.4 Telephone Blockage Rate

7.5.4a Service Level Standard: The Plan's service level standard requires that not more than one percent (1%) of incoming calls to the customer service telephone line will be blocked by a busy signal. The telephone blockage rate shall be measured monthly and reported to the Department quarterly.

7.5.4b Performance Guarantee: The Offeror's quoted amount to be credited against the Monthly Administrative Fee for each .01 to 1.0% of incoming calls to the Offeror's telephone line that are blocked by a busy signal, in excess of one percent (1%), as calculated on a Calendar Year basis, is \$6,600.

7.6.0 Management Reports and Claims Files Guarantee and Credit Amount

7.6.1 Service Level Standard: The Plan's service level standard requires that accurate management reports and claim files, as specified in Article XIII of this Agreement will be delivered to the Department no later than their respective due dates, inclusive of the date of receipt.

7.6.2 Performance Guarantee: The Offeror's quoted amount to be credited against the Offeror's Monthly Administrative Fee for each management report or claim file listed in Article XIII that is not received by its respective due date, is \$650 per report for each Business Day between the due date and the date the accurate management report or claims file is received by the Department inclusive of the date of receipt.

7.7.0 Member Communication Support and Credit Amount

7.7.1 Service Level Standard: The Contractor must accurately update the Plan's customized website within twenty-five (25) days of notification by the Department.

7.7.2 Performance Guarantee: The Contractor's quoted amount to be credited against the Monthly Administrative Fee for each calendar day in excess of the twenty-five (25) day standard that Plan benefit changes are not accurately updated to the Plan's customized website, is \$650.

7.8.0 Occupational Vision Program Utilization

7.8.1 Service Level Standard: The Plan's service level standard requires that the Contractor guarantee that the Occupational Vision Program's utilization rate will not materially exceed the Program's current utilization rate of fifty-nine (59%), derived by dividing the number of Occupational Frames dispensed by the total number of Enrollee Examinations (for the Groups eligible for Occupational Vision Benefits). The Occupational Vision Program utilization rate shall be measured and reported to the Department on a quarterly basis.

7.8.2 Performance Guarantee: The Contractor's quoted amount to be credited against the Contractor's Monthly Administrative Fee for each .01 to 1.0% above the Plan's Occupational Vision Program utilization rate standard of sixty-five (65%), as calculated on a calendar year basis is \$20,000.

ARTICLE VIII: MODIFICATION OF PROGRAM SERVICES

- 8.1.0** In the event that laws or regulations enacted by the federal government and/or the State of New York have an impact upon the conduct of this Agreement in such a manner that the DCS determines that any design elements or requirements of the Agreement must be revised, the DCS shall notify the Contractor of any such revisions and shall provide the Contractor with a reasonable time within which to implement such revisions.
- 8.2.0** In the event that the NYS and the unions representing State Employees enter into collective bargaining agreements or the State otherwise requires changes in Plan design elements or requirements of the Agreement, the DCS shall notify the Contractor of such changes and shall provide the Contractor with reasonable notice to implement such changes.
- 8.3.0** To the extent that any of the events as set forth in this Article shall take place and constitute a material and substantial change in the delivery of services that are contemplated in accordance with the terms of the Program as of the Effective Date and which the Contractor is required to perform or deliver under the Agreement, the Contractor may submit a written request to the DCS to initiate review of the fee(s) received by the Contractor for services provided and guarantees made by the Contractor under the terms of the Agreement, accompanied by appropriate documentation. The DCS reserves the right to request and the Contractor shall agree to provide any additional information and documentation the DCS deems necessary to determine in its sole discretion whether an increase in the fee(s) or modification of the guarantees is warranted. If DCS determines an increase in the fee(s) or modification of the guarantees is warranted then DCS will modify the fee(s) to the extent DCS determines reasonable and necessary. The DCS may in its sole discretion modify guarantees it determines necessary to reflect Program modifications.

Should the DCS approve the Contractor's request to modify the fee(s), and/or guarantees, such approval shall be subject to written amendment and approval by the Office of the State Comptroller. The Contractor shall implement changes as required by the DCS with or without final resolution of any fee proposal.

ARTICLE IX: PAYMENT FOR PLAN CLAIMS

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

ARTICLE X: PAYMENT FOR MONTHLY ADMINISTRATIVE FEE AND COMMUNICATIONS FEE

- 10.1.0 The Contractor agrees that the following costs are not allowable and shall not be charged to the Plan as either a direct or formula expense: commissions, non-Plan advertising costs, capital expenditures for improvement or acquisition of facilities, entertainment costs, including social activities or cost of alcoholic beverages, costs of fund raising, costs for political activities, costs for attendance at

conferences or meetings of professional organizations unless attendance is necessary in connection with the Plan and the Contractor receives prior written approval by the DCS and any costs related to or associated with the preparation and submission of a competitive proposal, including but not limited to the Proposal, Exhibit C.

- 10.2.0** The per Enrollee Monthly Administrative Fees for the Plan shall be paid in accordance with Exhibit E of this Agreement.
- 10.3.0** The DCS shall calculate the total Monthly Administrative Fees payable to the Contractor for each month by multiplying the per Monthly Administrative Fees as set forth in Exhibit E, by the number of contracts in force each month as reported by the New York State Benefit Eligibility and Accounting System on the first Thursday of each month. The DCS shall furnish to the Contractor a written statement for each month showing the number of Plan contracts then in force.
- 10.4.0** The cost of the Contractor's communication plan, including but not limited to, developing, printing and mailing to Enrollees' homes, a Participating Provider directory and a Vision Plan Summary of Benefits booklet as described in Article VI, Paragraph 6.5.2, as well as distributing to the Health Benefit Administrator of each State Agency and Participating Employer, a quantity of Vision Plan Summary of Benefit booklets for the Plan sufficient to provide a copy to each newly eligible employee throughout the term of this Agreement, shall be borne by the Contractor and be included in the one-time Communications Fee set forth in Exhibit E.
- 10.5.0** The cost of developing, printing and mailing to Enrollees' homes notification of benefit modifications and any other communicational materials that may be required by DCS during the 5-year term of this Agreement are not included in the Monthly Administrative Fees or the one-time Communications Fee. Such required communications material must be approved in advance by DCS. The Contractor shall be reimbursed only for approved communications costs. All other communication expenses shall be the sole responsibility of the Contractor.

ARTICLE XI: ENROLLMENT INFORMATION AND RECORDS

- 11.1.0** The Contractor shall maintain records from which may be determined at all times the names of all Enrollees covered hereunder and the benefits in force for each such Enrollee together with the date when any coverage became effective and the effective date of any change in benefits.

- 11.2.0** The DCS shall transmit enrollment information provided by the Enrollee to the Contractor for the Plan in an electronic format through the New York State Benefit Eligibility and Accounting System, consistent with Section 6.6.0 of this Agreement. The eligibility rules and the enrollment reports generated as a result of these eligibility rules shall be the sole means of determining valid enrollment for benefits under the Plan.
- 11.3.0** The DCS and the Enrollees shall furnish to the Contractor all information that the Contractor may reasonably require with regard to any matters pertaining to the enrollment of Enrollees under this Agreement. A person will not be entitled to or deprived of benefits under the Agreement due to clerical errors.
- 11.4.0** The DCS agrees to provide the Contractor with reasonable access to records of the DCS which may have a bearing on the benefits provided by the Contractor or calculation of the Contractor's Monthly Administrative Fee as set forth under Article X of the Agreement.

ARTICLE XII: DATA SHARING AND OWNERSHIP

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

ARTICLE XIII: REPORTS AND CLAIMS FILES

13.1.0 Semi-Annual Reports

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

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

13.1.2a Quality of Professional care provided, including eye examinations, contact lens fittings and eyewear dispensing;

13.1.2b Quality of frames and lenses;

13.1.2c Technical competency, familiarity with Plan benefit design, and customer service skills of the Participating Provider staff; and

13.1.2d Adequacy of Provider access, including ease of making an appointment and convenience of office hours.

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

13.2.0 Quarterly Report

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

13.2.2 Quarterly Participating Provider Dispensing Patterns Report: The Contractor must submit a quarterly report detailing utilization statistics by Participating Provider, identifying any outlier dispensing patterns as well as actions taken by the Contractor to address material variances of individual Participating Providers. The report is due thirty (30) days after the end of the quarter.

13.3.0 Monthly Reports

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

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

13.4.0 Ad Hoc Reports

13.4.1 Ad Hoc Reports: The Contractor shall be required to submit such reports and analyses as DCS deems necessary, in a format specified by the DCS. The frequency and due dates for such reports will be negotiated with the Contractor. Any ad hoc report which will result in charges to the Plan requires written notification by the Contractor. Charges requested by the Contractor will be negotiated on a case by case basis.

ARTICLE XIV: GRACE PERIOD

14.1.0 The Contractor shall grant the DCS a “Grace Period” for the payment of claims and Monthly Administrative Fees. The Grace Period shall be thirty (30) Days in duration commencing on the Due Date, which is the thirty days after receipt of an accurate invoice, as set forth in Article IX, Payments for Plan Claims and Article X, Payment for Monthly Administrative Fees and Communication Fee. During the Grace Period, Program Services provided under the Agreement shall continue in full force and effect. If the DCS gives written notice to the Contractor prior to the expiration of the Grace Period that the Agreement is to be terminated before the expiration of the Grace Period, the Agreement shall be terminated as of the date of receipt of such written notice by

the Contractor or the date specified by the DCS for such termination, whichever date is later. DCS shall be liable for the payment of claims and Monthly Administration Fees accruing for the period of time such Agreement continues in force commencing with the last Due Date for which claims and Monthly Administration Fees has not been paid and ending with the date of termination.

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

ARTICLE XV: TRANSITION AND TERMINATION OF CONTRACT

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

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

15.2.1 Electronic transition of Plan data including, but not limited to, the most recent date of service for Enrollees and Dependents and unique information required for a smooth transition to a successor contractor including providing a test file to the successor contractor in advance of the implementation date; and

15.2.2 Completion of all such Contractor-provided services associated with claims incurred on or before the scheduled termination date of the Agreement.

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

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

-
- 15.5.0** The Contractor shall be responsible for transitioning the Plan in accordance with the approved Transition Plan.
- 15.6.0** To ensure that the transition to a successor organization provides Enrollee's with uninterrupted access to their NYS Vision Plan benefits and associated customer services, and to enable the Department to effectively manage the Agreement, the Contractor is required to provide the following Contractor-related obligations to the Program through the final financial settlement of the Agreement which includes but is not limited to:
- 15.6.1** Providing an electronic file of the most recent date of service for Enrollees and covered Dependents, including Laser Vision Correction Surgery Services in a format to be specified by the Department, no later than thirty (30) days prior to termination of the Agreement. A lag file must be provided fifteen (15) days after termination and monthly thereafter until the 90-day benefit period has elapsed;
 - 15.6.2** Providing all Contractor provided services associated with claims incurred on or before the scheduled termination date of the Agreement, including but not limited to paying network claims and, manual submit claims, and retaining NYBEAS access.
 - 15.6.3** Completing all required reports in the reporting section of this RFP;
 - 15.6.4** Providing the Program with sufficient staffing in order to address State audit requests and reports in a timely manner;
 - 15.6.5** Agreeing to fully cooperate with all the Department or Office of the NYS Comptroller (OSC) audits consistent with the requirements of Appendices A and B;
 - 15.6.6** Performing timely reviews and responses to audit findings submitted by the Department and the OSC's audit unit in accordance with the requirements set forth in Article XV "Audit Authority," Section VII, Contract Provisions; and
 - 15.6.7** Remitting reimbursement due the Program in a timely manner upon final audit determination consistent with the process specified in Article XV "Audit Authority" of Section VII, Contract Provisions and Appendix B.

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

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

ARTICLE XVI: AUDIT AUTHORITY

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

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

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

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

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

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

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

- 16.4.0** The Contractor shall make available for audit all data in its computerized files that is relevant to and subject to the Agreement. Such data may, at DCS discretion, be submitted to the DCS in machine-readable format, or the data may be extracted by the DCS, or by the Contractor under the direction of the DCS;
- 16.5.0** The Contractor shall, at the DCS' request, search its files, retrieve information and records, and provide to the auditors such documentary evidence as they require. The Contractor shall make sufficient resources available for the efficient performance of audit procedures;
- 16.6.0** The Contractor shall comment on the contents of any audit report prepared by the DCS and transmit such comments in writing to the DCS within 30 days of receiving any audit report. The response will specifically address each audit recommendation. If the Contractor agrees with the recommendation, the response will include a work plan and timetable to implement the recommendation. If the Contractor disagrees with an audit recommendation, the response will give all details and reasons for such disagreement. Resolution of any disagreement as to the resolution of an audit recommendation shall be subject to the dispute resolution procedures set forth in Appendix B of this Agreement.
- 16.7.0** If the Contractor has an independent audit performed of the records relating to this Agreement, a certified copy of the audit report shall be provided to the DCS within ten (10) Days after receipt of such audit report by the Contractor.
- 16.8.0** The audit provisions contained herein shall in no way be construed to limit the audit authority or audit scope of the Office of the NYS Comptroller as set forth in either Appendix A of this Agreement, Standard Clauses for All New York State Contracts, or Appendix B, Standard Clauses for All DCS Contracts.

ARTICLE XVII: CONFIDENTIALITY

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

- 17.1.0** All claims and enrollment records relating to the Agreement are confidential and shall be used by the Contractor solely for the purpose of carrying out its obligations under the Agreement, for measuring the performance of the Contractor in accordance with the performance guarantees of

the Agreement, and for providing the DCS with material and information as may be specified elsewhere in this Agreement.

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

ARTICLE XVIII: USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION

- 18.1.0** For purposes of this Article, the term "Protected Health Information" ("PHI") means any information, including demographic information collected from an individual, that relates to the past, present, or future physical or mental health or condition of an individual, to the provision of health care to an individual, or to the past, present, or future payment for the provision of

health care to an individual, that identifies the individual, or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual. Within the context of this Agreement, PHI may be received by the Contractor from the Department or may be created or received by the Contractor on behalf of the Department. All PHI received or created by the Contractor as a consequence of its performance under this Agreement is referred to herein collectively as “Department’s PHI.”

18.2.0 The Contractor acknowledges that the Department administers on behalf of New York State several group health plans as that term is defined in HIPAA’s implementing regulations at 45 CFR Parts 160 and 164, and that each of those group health plans consequently is a “covered entity” under HIPAA. These group health plans include NYSHIP, which encompasses The Empire Plan as well as participating health maintenance organizations; the Dental Plan, and the Vision Plan. In this capacity, the Department is responsible for the administration of these “covered entities” under HIPAA. The Contractor further acknowledges that the Department has designated NYSHIP and The Empire Plan as an Organized Health Care Arrangement (OHCA), respectively. The Contractor further acknowledges that the Contractor is a HIPAA “business associate” of the Department as a consequence of the Contractor’s provision of services to and/or on behalf of the Department within the context of the Contractor’s performance under this Agreement to the extent that such services extend beyond the NYSHIP OHCA or Empire Plan OHCA, and that the Contractor’s provision of such services may involve the disclosure to the Contractor of individually identifiable health information from the Department or from other parties on behalf of the Department, and also may involve the Contractor’s disclosure to the Department of individually identifiable health information as a consequence of the services performed under this Agreement.

18.3.0 Permitted Uses and Disclosures of the Department’s PHI: The Contractor may use and/or disclose the Department’s PHI solely in accordance with the terms of this Agreement. In addition, the Contractor may use the Department’s PHI to provide data aggregation services relating to the health care operations of the Department. Further, the Contractor may use and disclose the Department’s PHI for the proper management and administration of the Contractor if such use is necessary for the Contractor’s proper management and administration or to carry out the Contractor’s legal responsibilities, or if such disclosure is required by law or the Contractor obtains reasonable assurances from the person to whom the information is disclosed that it shall be

held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Contractor or any instances of which it is aware in which the confidentiality of the information has been breached.

18.4.0 Nondisclosure of the Department's PHI: The Contractor shall not use or further disclose the Department's PHI otherwise than as permitted or required by this Agreement or as otherwise required by law. The Contractor shall limit its uses and disclosures of PHI when practical to the information comprising a Limited Data Set, and in all other cases to the minimum necessary to accomplish the intended purpose of the PHI's access, use, or disclosure.

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

18.6.0 Breach Notification

18.6.1 Reporting: The Contractor shall report to the Department any breach of unsecured PHI, including any use or disclosure of the Department's PHI otherwise than as provided for by this Agreement, of which the Contractor becomes aware. Further, the Contractor shall report to the Department any security incident of which it becomes aware. "Security incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information, or interference with system operations in an information system. The Contractor shall notify the Department within five (5) business days of the date the Contractor becomes aware of the event.

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

-
- 18.6.2a** the date of the breach incident;
- 18.6.2b** the date of the discovery of the breach;
- 18.6.2c** a brief description of what happened;
- 18.6.2d** a description of the types of unsecured PHI that were involved;
- 18.6.2e** identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the breach;
- 18.6.2f** a brief description of what the Contractor is doing to investigate the breach, to mitigate harm to individuals and to protect against any further breaches; and
- 18.6.2g** any other details necessary to complete an assessment of the risk of harm to the individual.
- 18.6.3** The Department will be responsible to provide notification to individuals whose unsecured PHI has been or is reasonably believed to have been accessed, acquired or disclosed as a result of a breach, as well as the Secretary and the media, as required by 45 CFR Part 164.
- 18.6.4** The Contractor shall maintain procedures to sufficiently investigate the breach, mitigate losses, and protect against any future breaches, and to provide a description of these procedures and the specific findings of the investigation to the Department upon request.
- 18.6.5** For purposes of this Agreement, “Unsuccessful Security Incidents” include activity such as pings and other broadcast attacks on Business Associate’s firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of electronic PHI.
- 18.6.6** The Contractor shall mitigate, to the extent practicable, any harmful effects from any use or disclosure of PHI by the Contractor not permitted by this Agreement.
- 18.7.0 Associate’s Agents:** The Contractor shall require all of its agents or sub-contractors to whom it provides the Department’s PHI, whether received from the Department or created or received by the Contractor on behalf of the Department, agree to the same restrictions and conditions on the access, use and disclosure of PHI that apply to the Contractor with respect to the Department’s PHI under this Agreement.

- 18.8.0 Availability of Information to the Department:** The Contractor shall make available to the Department such information and documentation as the Department may require regarding any disclosures of PHI by the Contractor to fulfill the Department's obligations to provide access to, to provide a copy of, and to account for disclosures of the Department's PHI in accordance with HIPAA and its implementing regulations. The Contractor shall provide such information and documentation within a reasonable amount of time of its receipt of the request from the Department.
- 18.9.0 Amendment of the Department's PHI:** The Contractor shall make the Department's PHI available to the Department as the Department may require to fulfill the Department's obligations to amend individuals' PHI pursuant to HIPAA and its implementing regulations. The Contractor shall, as directed by the Department, incorporate any amendments to the Department PHI into copies of such Department PHI maintained by the Contractor.
- 18.10.0 Internal Practices:** The Contractor shall make its internal practices, policies and procedures, books, records, and agreements relating to the use and disclosure of the Department's PHI, whether received from the Department or created or received by the Contractor on behalf of the Department, available to Department and/or the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by the Department and/or the Secretary for purposes of determining the Department's compliance with HIPAA and its implementing regulations.
- 18.11.0 Termination**
- 18.11.1** This Agreement may be terminated by the Department at the Department's discretion if the Department determines that the Contractor, as a business associate, has violated a material term of this Article or of the Agreement with respect to the Contractor's obligations under this Article.
- 18.11.2 Disposition of the Department's PHI:** At the time this Agreement is terminated, the Contractor shall, if feasible, return or destroy all of the Department's PHI, whether received from the Department or created or received by the Contractor on behalf of the Department, that the Contractor still maintains in any form and retain no copies of such information. Alternatively, if such return or destruction is not feasible, the Contractor shall extend indefinitely the protections of this Agreement to the information and shall

limit further uses and disclosures to those purposes that make the return or destruction of the Department's PHI infeasible.

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

18.13.0 Miscellaneous:

18.13.1 Amendments: This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary to achieve and maintain compliance with the requirements of the Regulations.

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

18.13.3 Regulatory References: Any reference herein to a federal regulatory section within the Code of Federal Regulations shall be a reference to such section as it may be subsequently updated, amended or modified.

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

ARTICLE XVIV: NOTICES

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

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

19.1.2 by facsimile transmission;

19.1.3 by personal delivery;

19.1.4 by expedited delivery service; or

19.1.5 by e-mail.

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

New York State Department of Civil Service

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

Name: Richard J. Enterline, Esq.
Title: Deputy General Counsel
Address: Highmark, Inc., 1800 Center St., Camp Hill, PA 17089
Telephone Number: 717-302-4207
Facsimile Number: 717-302-4203
E-Mail Address: richard.enterline@highmark.com

19.2.0 Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

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

Contractor: Davis Vision, Inc.
Contract Number: C000607

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

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

**DEIRDRE TAYLOR
DEPUTY COMMISSIONER FOR
ADMINISTRATION**

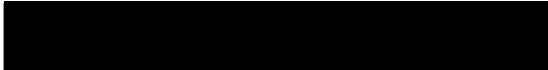
Date: 9.15.11

By: 

Title: Deputy Commissioner

DAVIS VISION, INC.


Date: 9/9/2011

By: 

Name: MICHAEL L THURDEAU

Title: Chief Operating Officer

STATE OF New York
COUNTY OF Albany) ss:

On the 9th day of September, 2011, before me personally came , to me known, and known to me to be the person who executed the above instrument, who, being duly sworn by me, did for her/himself depose and say that (s)he is the Chief operating officer of Davis Vision Inc the corporation or organization described in and which executed the above instrument; and that (s)he signed his/her name thereto.





My commission expires: 9/11/13


NOTARY PUBLIC
KATHLEENA A. DEGUIRE
Notary Public, State of New York
No. 01DE4956097
Qualified in Albany County
Commission Expires Sept 14, 2013

Approved as to form:

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL
APPROVED TO FORM
NYS ATTORNEY GENERAL

THOMAS P. DINAPOLI
STATE COMPTROLLER

By: 
Date: SEP 20 2011

PRINCIPAL ATTORNEY

By: 
Date: 11/2/11

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

TABLE OF CONTENTS

	Page
1. Executory Clause	3
2. Non-Assignment Clause	3
3. Comptroller's Approval	3
4. Workers' Compensation Benefits	3
5. Non-Discrimination Requirements	3
6. Wage and Hours Provisions	4
7. Non-Collusive Bidding Certification	4
8. International Boycott Prohibition	4
9. Set-Off Rights	4
10. Records	4
11. Identifying Information and Privacy Notification	5
12. Equal Employment Opportunities For Minorities and Women	5
13. Conflicting Terms	6
14. Governing Law	6
15. Late Payment	6
16. No Arbitration	6
17. Service of Process	6
18. Prohibition on Purchase of Tropical Hardwoods	6
19. MacBride Fair Employment Principles	6
20. Omnibus Procurement Act of 1992	6
21. Reciprocity and Sanctions Provisions	7
22. Compliance with New York State Information Security Breach and Notification Act	7
23. Compliance with Consultant Disclosure Law	7
24. Procurement Lobbying	7
25. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors	8

STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or

reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).

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

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

this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

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

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

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce

Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

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

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

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a

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

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

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

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without

discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

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

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

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

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

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

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to

service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

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

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

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

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

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

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

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

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

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

- (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;
- (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
- (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the

New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

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

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

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

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

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

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

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

APPENDIX B
STANDARD CLAUSES FOR ALL DEPARTMENT CONTRACTS

TABLE OF CONTENTS

1.	INTEGRATION	2
2.	EXECUTORY PROVISION.....	2
3.	CHOICE OF LAW	2
4.	DISPUTE RESOLUTION	2
5.	WAIVER OF BREACH.....	2
6.	NEW YORK STATE REQUIREMENTS.....	2
7.	OUTSIDE OF SCOPE	3
8.	NON-ASSIGNABILITY	3
9.	NOTIFICATION.....	3
10.	INDEMNIFICATION	3
11.	PATENT, COPYRIGHT OR PROPRIETARY RIGHTS INFRINGEMENT	4
12.	DATE/TIME WARRANTY	4
13.	VIRUS WARRANTY	5
14.	TITLE AND OWNERSHIP WARRANTY	5
15.	USE RESTRICTIONS AND INTELLECTUAL PROPERTY	5
16.	OWNERSHIP/TITLE TO PRODUCT DELIVERABLES	5
17.	FORCE MAJEURE.....	7
18.	TIME OF THE ESSENCE	7
19.	RIGHTS AND REMEDIES	7
20.	FEDERAL AND STATE COMPLIANCE	7
21.	TAXES	8
22.	INDEPENDENT CONTRACTOR	8
23.	NO THIRD PARTY BENEFICIARIES.....	8
24.	HEADINGS OR CAPTIONS	8
25.	PARTIAL INVALIDITY.....	8
26.	CONFLICT OF INTEREST	8
27.	AUDIT AUTHORITY.....	9
28.	CONFIDENTIALITY	9
29.	INFORMATION SECURITY REQUIREMENTS.....	9
30.	NONDISCLOSURE OF CONFIDENTIAL INFORMATION	10
31.	FREEDOM OF INFORMATION LAW	11
32.	TERMINATION OF AGREEMENT.....	11
33.	CONTRACTOR PERSONNEL	12
34.	OPERATIONAL CONTACTS	12
35.	SUBCONTRACTING	13
36.	PUBLICITY AND COMMUNICATIONS.....	14
37.	CONSULTANT DISCLOSURE REQUIREMENTS	14
38.	PROCUREMENT LOBBYING RESTRICTIONS UNDER STATE FINANCE LAW SECTIONS 139-J AND 139-K.....	14
39.	VENDOR RESPONSIBILITY	14
40.	TAX LAW SECTION 5-A - CERTIFICATION REGARDING SALES AND COMPENSATING USE TAXES	15
41.	CONTRACT PAYMENT.....	15

1. INTEGRATION

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

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

2. EXECUTORY PROVISION

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

3. CHOICE OF LAW

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

4. DISPUTE RESOLUTION

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

5. WAIVER OF BREACH

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

6. NEW YORK STATE REQUIREMENTS

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

7. OUTSIDE OF SCOPE

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

8. NON-ASSIGNABILITY

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

9. NOTIFICATION

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

10. INDEMNIFICATION

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

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

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

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

11. PATENT, COPYRIGHT OR PROPRIETARY RIGHTS INFRINGEMENT

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

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

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

12. DATE/TIME WARRANTY

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

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

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

13. VIRUS WARRANTY

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

14. TITLE AND OWNERSHIP WARRANTY

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

15. USE RESTRICTIONS AND INTELLECTUAL PROPERTY

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

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

16. OWNERSHIP/TITLE TO PRODUCT DELIVERABLES

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

(A) Definitions

1. Product(s):

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

2. Existing Product(s):

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

3. Custom Product(s):

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

(B) Title to Project Deliverables

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

1. Existing Product(s):

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

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

2. Custom Product(s):

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

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

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

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

3. **Documentation, Data & Reports**

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

17. FORCE MAJEURE

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

18. TIME OF THE ESSENCE

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

19. RIGHTS AND REMEDIES

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

20. FEDERAL AND STATE COMPLIANCE

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

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

21. TAXES

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

22. INDEPENDENT CONTRACTOR

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

23. NO THIRD PARTY BENEFICIARIES

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

24. HEADINGS OR CAPTIONS

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

25. PARTIAL INVALIDITY

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

26. CONFLICT OF INTEREST

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

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

27. AUDIT AUTHORITY

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

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

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

28. CONFIDENTIALITY

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

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

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

29. INFORMATION SECURITY REQUIREMENTS

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

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

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

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

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

30. NONDISCLOSURE OF CONFIDENTIAL INFORMATION

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

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

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

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

This representation shall survive termination of the Agreement.

31. FREEDOM OF INFORMATION LAW

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

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

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

32. TERMINATION OF AGREEMENT

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

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

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

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

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

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

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

33. CONTRACTOR PERSONNEL

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

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

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

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

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

34. OPERATIONAL CONTACTS

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

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

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

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

35. SUBCONTRACTING

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

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

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

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

36. PUBLICITY AND COMMUNICATIONS

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

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

37. CONSULTANT DISCLOSURE REQUIREMENTS

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

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

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

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

39. VENDOR RESPONSIBILITY

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

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

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

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

41. CONTRACT PAYMENT

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

May 2011



State of New York
Department of Civil Service
Albany, NY 12239

**MacBride Statement and
Non-Collusive Bidding Certification**

ADM-990 (1/07)

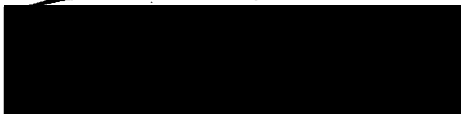
NON-DISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND
MACBRIDE FAIR EMPLOYMENT PRINCIPLES

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

- 1. Have business operations in Northern Ireland. Yes ____ or No X

If yes:

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



(Contractor's Signature)

Date: April 20, 2011

DAVIS VISION, INC.
(Name of Business)

NON-COLLUSIVE BIDDING CERTIFICATION

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

- 1. The prices in this bid have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- 2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
- 3. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

Date: April 20, 2011



(Contractor's Signature)

DAVIS VISION, INC.
(Name of Business)

Exhibit B

PLACE HOLDER FOR EXHIBIT B

REQUEST FOR PROPOSALS

entitled,

“NEW YORK STATE VISION PLAN SERVICES”

RELEASE DATE: March 1, 2011

Exhibit B-1

PLACE HOLDER FOR EXHIBIT B-1

"NEW YORK STATE VISION PLAN SERVICES"

**Official Department Response to Questions Raised Concerning the RFP
Release Date: March 29, 2011**

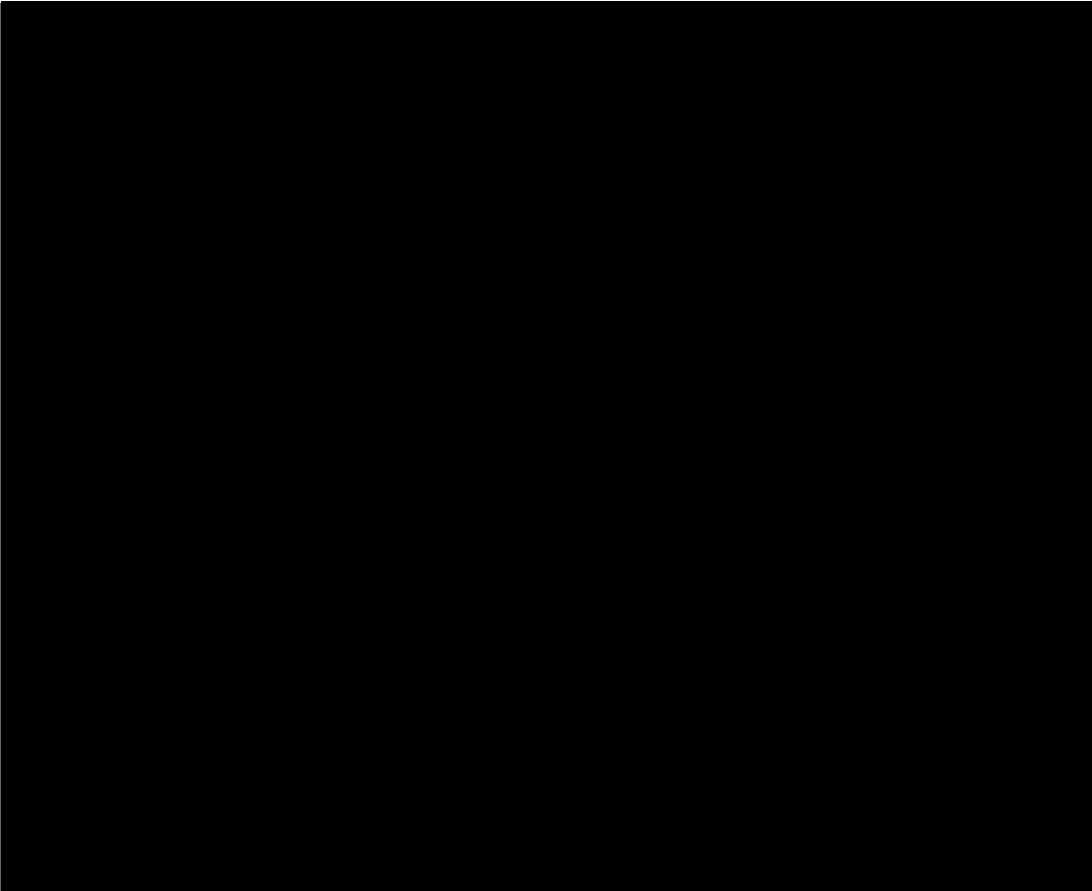
Exhibit C

PLACE HOLDER FOR EXHIBIT C
“NEW YORK STATE VISION PLAN SERVICES”
CONTRACTOR’S PROPOSAL
DATED: April 25, 2011

PLACE HOLDER FOR EXHIBIT C-1
“NEW YORK VISION PLAN SERVICES”

**Responses to clarifying questions and material clarifying the Contractor’s Proposal
dated June 2, 2011**

**NYS Vision Plan
Participating Provider and Laser Vision Correction Surgery Fee Schedule**

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

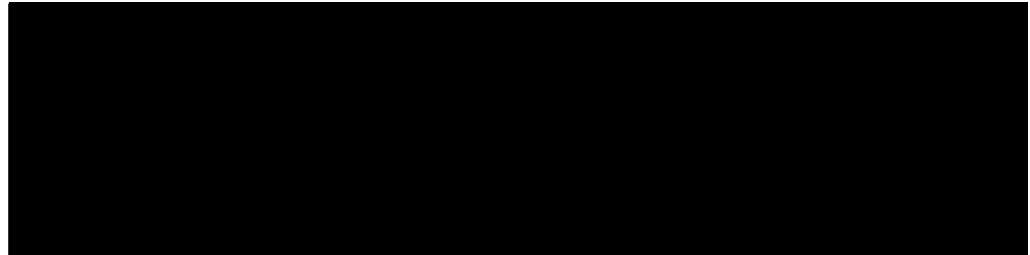
Note: Unit price quotes must be expressed in fixed dollar amounts.

**NYS Vision Plan
Monthly Administrative Fees and Communications Fee Schedule**

Proposed Monthly Administration Fee Per Enrollee (1)
For all groups excluding SEHP

For SEHP Only

Communications Fee (2)



Instructions:

- (1) Quote, in the space provided your proposed monthly administrative fees for the respective years and enrollee groups.
The fee will be multiplied by the number of enrollees in the respective groups to arrive at the aggregate administrative expense due the vendor.
- (2) Quote, in the space provided the proposed aggregate Communications Fee to be paid in year one for services indicated in Section IV.BA.a of the RFP.

Note: Fees must be expressed in fixed dollar amounts.

NYS Vision Plan Indemnity Reimbursement Schedule

The following is the Schedule of Indemnity Fees for Enrollees who choose to receive care from a Non-Panel Provider, or receive Non-Plan benefits.

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

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

**NYS Vision Plan
Summary of Benefit Eligibility by Employee Group**

Employee Group	Waiting Period New Employees	Dependent Child Benefits	Domestic Partner Coverage	Splitting of Benefits Allowed	Eligible for Upgrade Program	Eligible for Occupational Vision Program (3)	Eligible for Medical Exception Program	Eligible for MEP Exam (4)	Eligible for Laser Vision Correction
Council #2 (arbitration eligible)	28 days	Covered up to age 19, age 19- 25 must be full time student	Yes	90 day window at Participating Provider	Yes	No	Yes - enrollee or dependents, annual benefit	No	Yes: Enrollee -Funded Benefit (10% enrollee cost up to \$200 maximum once every five years); Dependent - Discount Benefit - effective 3/31/07
Council #2 (contract affected)	28 days	Covered up to age 19, age 19- 25 must be full time student	Yes	90 day window at Participating Provider	Yes	No	Yes - enrollee or dependents, annual benefit	No	Yes: Enrollee -Funded Benefit (10% enrollee cost up to \$200 maximum once every five years); Dependent - Discount Benefit - effective 10/1/07
NYSOPBA (arbitration eligible)	56 days	Covered up to age 19, age 19- 25 must be full time student	Yes	90 day window at Participating Provider	Yes	No	Yes - enrollee or dependents, annual benefit	Yes	Yes: Enrollee -Funded Benefit (10% enrollee cost up to \$200 maximum once every five years); Dependent - Discount Benefit - effective 1/1/10
NYSOPBA (contract affected) & UUP Lifeguards (5)	56 days	Covered up to age 19, age 19- 25 must be full time student	Yes	90 day window at Participating Provider	Yes	No	Yes - enrollee or dependents, annual benefit	Yes	Yes: Enrollee -Funded Benefit (10% enrollee cost up to \$200 maximum once every five years); Dependent - Discount Benefit - effective 9/1/10
W/C, Retirees, PEs & other unrepresented	56 days (effective 7/1/08)* *waiting period for PEs varies by agency	Covered up to age 19, age 19- 25 must be full time student	Yes* *PE on an individual group basis	90 day window at Participating Provider	Yes	Yes - Rx sunglasses not allowed	Yes - enrollee or dependents, annual benefit (effective 7/1/08)	Yes (effective 7/1/08)	No
PBA - Troopers	56 days	Covered up to age 19, age 19- 25 must be full time student	Yes	90 day window at Participating Provider	Yes	Yes (includes Rx Sunglasses and Prescription Lens Respirator Inserts) (2)	Yes - enrollee or dependents, annual benefit	Yes	Yes - Discount Benefit
PBA - Supervisors	56 days	Covered up to age 19, age 19- 25 must be full time student	Yes	90 day window at Participating Provider	Yes	Yes (includes Rx Sunglasses and Prescription Lens Respirator Inserts) (2)	Yes - enrollee or dependents, annual benefit	Yes	Yes - Discount Benefit
PIA	28 days	Covered up to age 19, age 19- 25 must be full	Yes	90 day window at Participating Provider	Yes	Yes (includes Rx Sunglasses and Prescription Lens Respirator Inserts) (2)	Yes - enrollee or dependents, annual benefit	Yes	Yes - Discount Benefit
PEF	56 days	Covered up to age 19, age 19- 25 must be full time student	Yes	90 day window at Participating Provider (effective 7/1/08)	Yes	Yes - Rx sunglasses not allowed	Yes - enrollee or dependents, annual benefit	Yes	Yes - Discount Benefit
ALESU	56 days	Covered up to age 19, age 19- 25 must be full time student	Yes	90 day window at Participating Provider	Yes	No	Yes - enrollee or dependents, annual benefit	No	Yes: Enrollee -Funded Benefit (10% enrollee cost up to \$200 maximum once every five years); Dependent - Discount Benefit - effective 1/1/07
SEHP (GSEU and CUNY) (1)	0 days	Covered up to age 26, regardless of student status	Yes	No, same day	No	No	No	No	No

- (1) \$10.00 copayment for routine eye exam available at a participating provider only.
(2) Prescription Lens Respirator Inserts are in addition to standard Occupational Vision Benefit.
(3) Purchase period for Occupational vision eyewear extended to 90 days from exam date.
(4) Eligible program participants may receive an examination less than twenty-four (24) months, but no less than one year, from last examination, when referred by the physician caring for the medical condition.
(5) UUP Lifeguards eligible for Laser Vision Correction Discount Program only (no funded benefit).

Effective September 1, 2010



THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT

THIS AGREEMENT (the "Agreement") by and between the NYS Department of Civil Service ("DCS"), with principal offices in Albany, NY 12239, and

Davis Vision, Inc.

with principal offices at

159 Express Drive
Plainview, NY 11803

(hereinafter "Third Party"), is entered into as of the date last written below ("the Effective Date").

This Agreement consists of this signature page and the following attachments incorporated by reference:

1. Attachment 1: Third Party Connection and Data Exchange Agreement Terms and Conditions
2. Attachment 2: Third Party Connection and Data Exchange Request Requirements Document
3. Attachment 3: Third Party Acceptable Use Policy and Agreement
4. Attachment 4: DCS Equipment Loan Agreement (Applicable: Yes No)

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

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

Third Party Name:	NYS Department of Civil Service (DCS)
Authorized Signature 	Authorized Signature
Name (Print) MICHAEL L DAVIDEAU	Name (Print) DEBORAH A. TAYLOR
Date 9/9/2011	Date 9.15.11



THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT

ATTACHMENT 1 – SECURITY REQUIREMENTS

1. *Right to Use Connection*

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

2. *Data Exchange*

2.1 Third Party may only use the data obtained for purposes outlined by the Third Party Connection and Data Exchange Request Requirements Document (Attachment 2) and the contract or Memoranda of Understanding, if any, that exists between DCS and Third Party for the provision of goods or services or governing conduct between DCS and Third Party with respect to the access to and use of DCS data.

2.2 Data exchange may be conducted only by methods and/or services outlined by the Third Party Connection and Data Exchange Request Requirements Document (Attachment 2). Third Party should expect that access to information and services may be limited, as determined or required by DCS.

3. *Network Security*

3.1 Third Party will allow only its own employees approved in advance by DCS (“Third Party Users”) to access the Network Connection or any DCS-owned equipment. Third Party shall be solely responsible for ensuring that Third Party Users are not security risks, and upon DCS’ request, Third Party will provide DCS with any information reasonably necessary for DCS to evaluate security issues relating to any Third Party User.

3.2 Third Party will promptly notify DCS whenever any Third Party User leaves Third Party’s employ or no longer requires access to the connection or DCS-owned Equipment.

3.3 Each Party will be solely responsible for the selection, implementation, and maintenance of security procedures and policies that are sufficient to ensure that (a) such party’s use of the connection (and Third Party’s use of DCS-owned Equipment) is secure and is used only for authorized purposes, and (b) such Party’s business records and data are protected against improper access, use, loss alteration or destruction.

3.4 The preferred connectivity method is via the Internet to a DCS-approved or DCS-provided Virtual Private Network (VPN) device. If the device is DCS-provided, DCS will loan the Third Party, in accordance with the DCS Equipment Loan Agreement, the required client software for establishing VPN connections with DCS. Normal DCS perimeter security measures will control access to the internal network.

3.5 Extranet – Designated routers are used in combination with firewall rules to allow access to be managed. A second authentication may be required.



Appendix C

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

4. *Notifications*

- 4.1 Third Party shall notify DCS in writing promptly of any change in its Users for the work performed over the Network Connection or whenever Third Party believes a change in the connection and/or functional requirements of the connection is necessary.
- 4.2 Any notices required by this Agreement shall be given in hand, sent by first class mail, or via facsimile to the applicable address set forth below.

Third Party Name: Davis Vision, Inc.	NYS Department of Civil Service Alfred E. Smith Office Building Albany, New York 12239
Address: 159 Express Street Plainview, NY 11803	
Attention: Paul Ennis	Attention: Louise Symansky



Appendix C

5. *Citizen Notifications*

If Third Party maintains "identifying personal information" on behalf of the Department and such information is compromised, Third Party shall notify the Department immediately that the information has been compromised, the circumstances under which the information was compromised, and the measures undertaken by Third Party to address those circumstances and to otherwise mitigate the effects of the compromise. If encrypted data is compromised along with the corresponding encryption key and encryption software, the data shall be considered unencrypted and the information will be considered compromised through unauthorized access. If the Department requests Third Party to do so, Third Party shall notify the persons whose identifying information was compromised. Such notification shall be communicated via postal service or email, as directed by the Department, and shall otherwise be executed in accordance with the Department's direction. Notification shall be delayed if a law enforcement agency determines that such notification may impede a criminal investigation. For the purpose of this section, "identifying personal information" shall be any information concerning an individual which, because of name, number, symbol, mark or other identifier in combination with any of the following, is unencrypted: (1) Social Security Number; or (2) driver's license number; or (3) financial account number, credit or debit card number, in combination with any required security code, access code, or password which would permit access to an individual's financial account; or (4) password which would permit access to the individual's account.

6. *Payment of Costs*

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

7. *Confidentiality*

- 7.1 Information exchanged for the business purposes outlined in Attachment 2 will be held confidential by the Parties to the maximum extent permitted by law. Each Party may internally use the information received from the other Party hereunder in connection with and as specifically necessary to accomplish the Business Purpose set forth in Attachment 2 and for no other purposes. Each Party may otherwise share such information with other third parties (e.g. consultants, subcontractors, control agencies) as required or permitted by law in order to effect the business purposes outlined in Attachment 2 and for no other purposes, provided that such third parties agree to the confidentiality restrictions set forth herein and as may be required otherwise by State and federal law.
- 7.2 Third Party must implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the sensitive information that it creates, receives, maintains, or transmits on behalf of DCS.
- 7.3 Unencrypted DCS information must not be transmitted over email.
- 7.4 Third Party must ensure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect it and report to the DCS Help Desk any security incident of which it becomes aware.



Appendix C

8. *Third Party Users*

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

9. *DCS-owned Equipment*

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

10. *Term, Termination and Survival*

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



11. *Severability*

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

12. *Waiver*

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

13. *Assignment*

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

14. *Force Majeure*

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

15. *Partial Invalidity*

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



THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT

ATTACHMENT 2 – REQUEST REQUIREMENTS

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

Part 1 – Business Justification

A. DCS Sponsor (Division Director)

Name:
Robert DuBois
Office Location:
Alfred E. Smith Building, Albany, NY 12239
Email Address:

Division:
Employee Benefits Division
Phone Number:

[Redacted]

[Redacted]

Back-up Point of Contact: (Data Custodian)

Name:
Barbara Vaughn
Office Location:
Alfred E. Smith Building, Albany, NY 12239
Email Address:

Division:
Employee Benefits Division
Phone Number:

[Redacted]

[Redacted]

B. Business Reason for Connection (To be completed by Sponsor)

State the purpose of establishing the connection and the purpose of the data transmission. Specify the business needs of the proposed connection. Use additional sheets of paper if needed.

Davis Vision, Inc. administers the NYS Vision Plan

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

Enrollment files will be transmitted to, and received from Davis Vision, Inc. via an SFTP connection. Limited Davis Vision, Inc. staff will have inquiry access to NYBEAS to verify vision plan enrollment.



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

Access Controls:

[Redacted]

Audit Controls:

[Redacted]

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

[Redacted]

[Redacted]

Method of Disposal of media and paper:

[Redacted]

User Account Management, including review of accounts:

[Redacted]

Physical Security:

[Redacted]



E. Estimated number of hours of use each week?

1 – 20

21 – 40

More than 40 hours per week

F. Anticipated normal hours of use?

M – F, 8:00 – 5:00 pm Eastern time

Other (specify):

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

1/1/2012

H. Approximately how long will the connection be needed?

Up to 6 months

6 – 12 months

More than 12 months

Specific time period:

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

Appendix C
Page 9 of 16

I. Other useful information

J. Third Party Information

Name of Third Party:

Davis Vision, Inc.

Main Office Address:

159 Express Street

Plainview, NY 11803

Management Contact

Name:

Paul Ennis

Address:

711 Troy-Schenectady Rd, Latham NY 12110

Phone Number:

Main Phone Number:

800-328-4728

Department:

IT

Email Address:

Manager's Name:

Carol Mason



Manager's Phone:
(518) 220-6206

Backup Contact

Name:
Tom Rosa
Address:
2921 Erie Blvd. East, Syracuse, NY 13224
Phone Number:
[REDACTED]
Manager's Phone:
[REDACTED]

Department:
Client Management
Email Address:
[REDACTED]
Manager's Name:
Steve Holden

Technical Contact

Name:
Customer Data Management
Address:
71 Troy-Schenectady Rd, Latham NY 12110
Phone Number:
(518) 220-6333
Manager's Name:
Tina Strubel
Technical Support Hours:
8 AM – 5 PM Monday - Friday
Escalation List:

Department:
Customer Data Management
Email Address:
custdatamgt@davisvision.com

Manager's Phone:
[REDACTED]

Domain name(s):

Host name(s):



User Names and Contact Information. (*List all employees of the Third Party who will use this access.*)

User 1 (*name, phone, email*):

Kathleen Main, [REDACTED]

User 2 (*name, phone, email*):

Ashley Maignan, [REDACTED]

User 3 (*name, phone, email*):

Deborah Schluter, [REDACTED]

User 4 (*name, phone, email*):

Susan Scicchitano, [REDACTED]

User 5 (*name, phone, email*):

Anita Rutz, [REDACTED]

User 6 (*name, phone, email*):

Jennifer Charbonneau, [REDACTED]

User 7 (*name, phone, email*):

Judith Sendra, [REDACTED]

User 8 (*name, phone, email*):

User 9 (*name, phone, email*):

User 10 (*name, phone, email*):

K. Other information



State of New York
Department of Civil Service
Albany, New York 12239

ADMINISTRATIVE SERVICES DIVISION
Third Party Connection and Data Exchange Agreement
Attachment 3 – Third Party Acceptable Use Policy and Agreement
ADM-125 (4/06)

Appendix C
Page 11 of 16

THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT

ATTACHMENT 3 – THIRD PARTY ACCEPTABLE USE POLICY AND AGREEMENT

This Policy and Agreement applies to all forms of computer and networking use, including local access at the Department of Civil Service (DCS) premises, remote access via public or private networks, access using DCS equipment, access using individual or group accounts, and access via other methods.

A signed paper copy of this form must be submitted by any individual (1) for whom authorization of a new user account is requested, (2) who will use a shared third party account, and/or (3) who is requesting reauthorization of an existing use. Modifications to the terms and conditions of this agreement will not be accepted by DCS management.

Indicate here if this is a notification that the User named below no longer requires access:

User's Name (print): <i>KATHLEEN MAIN</i>			
Organization: <i>DAVIS VISION, INC.</i>			
Telephone Number:	Area code	Number	Extension
		[REDACTED]	
Office Address: <i>711 TROY - SCHENECTADY RD SUITE 301 LATHAM NY 12110</i>			

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

User Signature: [REDACTED]	Date: <i>9/2/11</i>
-------------------------------	------------------------

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

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



State of New York
Department of Civil Service
Albany, New York 12239

ADMINISTRATIVE SERVICES DIVISION
Third Party Connection and Data Exchange Agreement
Attachment 3 – Third Party Acceptable Use Policy and Agreement
ADM-125 (4/06)

Appendix C
Page 11 of 16

THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT
ATTACHMENT 3 – THIRD PARTY ACCEPTABLE USE POLICY AND AGREEMENT

This Policy and Agreement applies to all forms of computer and networking use, including local access at the Department of Civil Service (DCS) premises, remote access via public or private networks, access using DCS equipment, access using individual or group accounts, and access via other methods.

A signed paper copy of this form must be submitted by any individual (1) for whom authorization of a new user account is requested, (2) who will use a shared third party account, and/or (3) who is requesting reauthorization of an existing use. Modifications to the terms and conditions of this agreement will not be accepted by DCS management.

Indicate here if this is a notification that the User named below no longer requires access:

User's Name (print):		JUDITH SENDRA	
Organization:		DAVIS VISION, INC	
Telephone Number:	Area code	[REDACTED]	
Office Address:			
711 TROY-SCHENECTADY RD SUITE 301 LATHAM NY 12110			

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

[REDACTED SIGNATURE]	Date:
	9-12-11

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

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



State of New York
 Department of Civil Service
 Albany, New York 12239

ADMINISTRATIVE SERVICES DIVISION
Third Party Connection and Data Exchange Agreement
Attachment 3 – Third Party Acceptable Use Policy and Agreement
 ADM-125 (4/06)

Appendix C
 Page 11 of 16

THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT

ATTACHMENT 3 – THIRD PARTY ACCEPTABLE USE POLICY AND AGREEMENT

This Policy and Agreement applies to all forms of computer and networking use, including local access at the Department of Civil Service (DCS) premises, remote access via public or private networks, access using DCS equipment, access using individual or group accounts, and access via other methods.

A signed paper copy of this form must be submitted by any individual (1) for whom authorization of a new user account is requested, (2) who will use a shared third party account, and/or (3) who is requesting reauthorization of an existing use. Modifications to the terms and conditions of this agreement will not be accepted by DCS management.

Indicate here if this is a notification that the User named below no longer requires access:

User's Name (print): <i>ASHLEY MAIGNAN</i>			
Organization: <i>DAVIS VISION, INC</i>			
Telephone Number:	Area code	Number	Extension
Office Address: <i>711 TRAY - SCHENECTADY RD SUITE 301 LATHAM NY 12110</i>			

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

User Signature: 	Date: <i>8/12/11</i>
---------------------	-------------------------

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

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



State of New York
 Department of Civil Service
 Albany, New York 12239

ADMINISTRATIVE SERVICES DIVISION
Third Party Connection and Data Exchange Agreement
Attachment 3 – Third Party Acceptable Use Policy and Agreement
 ADM-125 (4/06)

Appendix C
 Page 11 of 16

THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT

ATTACHMENT 3 – THIRD PARTY ACCEPTABLE USE POLICY AND AGREEMENT


This Policy and Agreement applies to all forms of computer and networking use, including local access at the Department of Civil Service (DCS) premises, remote access via public or private networks, access using DCS equipment, access using individual or group accounts, and access via other methods.

A signed paper copy of this form must be submitted by any individual (1) for whom authorization of a new user account is requested, (2) who will use a shared third party account, and/or (3) who is requesting reauthorization of an existing use. Modifications to the terms and conditions of this agreement will not be accepted by DCS management.

Indicate here if this is a notification that the User named below no longer requires access:

User's Name (print):			
DEBORAH SCHLUTER			
Organization:			
DAVIS VISION, INC			
Telephone Number:	Area code	Number	Extension
		[REDACTED]	
Office Address:			
711 TROY-SCHENECTADY RD SUITE 301 LATHAM NY 12110			

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

User Signature: 	Date: 9/12/11
---	---------------

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

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



State of New York
Department of Civil Service
Albany, New York 12239

ADMINISTRATIVE SERVICES DIVISION
Third Party Connection and Data Exchange Agreement
Attachment 3 – Third Party Acceptable Use Policy and Agreement
ADM-125 (4/06)

Appendix C
Page 11 of 16


THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT
ATTACHMENT 3 – THIRD PARTY ACCEPTABLE USE POLICY AND AGREEMENT

This Policy and Agreement applies to all forms of computer and networking use, including local access at the Department of Civil Service (DCS) premises, remote access via public or private networks, access using DCS equipment, access using individual or group accounts, and access via other methods.

A signed paper copy of this form must be submitted by any individual (1) for whom authorization of a new user account is requested, (2) who will use a shared third party account, and/or (3) who is requesting reauthorization of an existing use. Modifications to the terms and conditions of this agreement will not be accepted by DCS management.

Indicate here if this is a notification that the User named below no longer requires access:

User's Name (<i>print</i>):			
SUSAN SCICCHITANO			
Organization:			
DAVIS VISION, INC			
Telephone Number:	Area code	Number	Extension
Office Address:			
711 TROY-SCHENECTADY RD SUITE 301 LATHAM NY 12110			

<i>The undersigned acknowledges that he or she has read, understands, and agrees to comply with this Third Party Acceptable Use Policy and Agreement governing the use of DCS computing resources.</i>	
Signature: 	Date: 9-13-11

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

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



State of New York
Department of Civil Service
Albany, New York 12239

ADMINISTRATIVE SERVICES DIVISION
Third Party Connection and Data Exchange Agreement
Attachment 3 – Third Party Acceptable Use Policy and Agreement
ADM-125 (4/06)

Appendix C
Page 11 of 16

THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT

ATTACHMENT 3 – THIRD PARTY ACCEPTABLE USE POLICY AND AGREEMENT

This Policy and Agreement applies to all forms of computer and networking use, including local access at the Department of Civil Service (DCS) premises, remote access via public or private networks, access using DCS equipment, access using individual or group accounts, and access via other methods.

A signed paper copy of this form must be submitted by any individual (1) for whom authorization of a new user account is requested, (2) who will use a shared third party account, and/or (3) who is requesting reauthorization of an existing use. Modifications to the terms and conditions of this agreement will not be accepted by DCS management.

Indicate here if this is a notification that the User named below no longer requires access:

User's Name (<i>print</i>):			
JENNIFER CHARBONNEAU			
Organization:			
DAVIS VISION, INC			
Telephone Number:	Area code	Number	Extension
Office Address:			
711 TROY-SCHENECTADY RD SUITE 301 LATHAM NY 12110			

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

U	Date:
	9/12/11

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

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



State of New York
Department of Civil Service
Albany, New York 12239

ADMINISTRATIVE SERVICES DIVISION
Third Party Connection and Data Exchange Agreement
Attachment 3 – Third Party Acceptable Use Policy and Agreement
ADM-125 (4/06)

Appendix C
Page 11 of 16

THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT

ATTACHMENT 3 – THIRD PARTY ACCEPTABLE USE POLICY AND AGREEMENT

This Policy and Agreement applies to all forms of computer and networking use, including local access at the Department of Civil Service (DCS) premises, remote access via public or private networks, access using DCS equipment, access using individual or group accounts, and access via other methods.

A signed paper copy of this form must be submitted by any individual (1) for whom authorization of a new user account is requested, (2) who will use a shared third party account, and/or (3) who is requesting reauthorization of an existing use. Modifications to the terms and conditions of this agreement will not be accepted by DCS management.

Indicate here if this is a notification that the User named below no longer requires access:

User's Name (print):		ANITA RUTZ	
Organization:		DAVIS VISION, INC	
Telephone Number:	Area code	[REDACTED]	
Office Address:		711 TROY-SCHENECTADY RD SUITE 301 LADYHAM NY 12110	

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

Us	[REDACTED]	Date:	9-12-11
----	------------	-------	---------

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

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



State of New York
 Department of Civil Service
 The State Campus
 Albany, New York 12239

ADMINISTRATIVE SERVICES DIVISION
 Third Party Connection and Data Exchange Agreement
 Attachment 4 – Equipment Loan Agreement
 ADM-125 (4/06)

Appendix C
 Page 11 of 16

THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT
ATTACHMENT 3 – THIRD PARTY ACCEPTABLE USE POLICY AND AGREEMENT

This Policy and Agreement applies to all forms of computer and networking use, including local access at the Department of Civil Service (DCS) premises, remote access via public or private networks, access using DCS equipment, access using individual or group accounts, and access via other methods.

A signed paper copy of this form must be submitted by any individual (1) for whom authorization of a new user account is requested, (2) who will use a shared third party account, and/or (3) who is requesting reauthorization of an existing use. Modifications to the terms and conditions of this agreement will not be accepted by DCS management.

Indicate here if this is a notification that the User named below no longer requires access:

User's Name (<i>print</i>):	
Gwen Chamberlain	
Organization:	
Davis Vision	
Telephone Number:	Area code [REDACTED]
Office Address:	
711 Troy Schenectady Road Latham NY 11803	

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

User Signature:	Date:
[REDACTED]	11/29/11

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

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



State of New York
 Department of Civil Service
 The State Campus
 Albany, New York 12239

ADMINISTRATIVE SERVICES DIVISION
 Third Party Connection and Data Exchange Agreement
 Attachment 4 - Equipment Loan Agreement
 ADM-125 (4/06)

Appendix C
 Page 11 of 16

THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT

ATTACHMENT 3 - THIRD PARTY ACCEPTABLE USE POLICY AND AGREEMENT

This Policy and Agreement applies to all forms of computer and networking use, including local access at the Department of Civil Service (DCS) premises, remote access via public or private networks, access using DCS equipment, access using individual or group accounts, and access via other methods.

A signed paper copy of this form must be submitted by any individual (1) for whom authorization of a new user account is requested, (2) who will use a shared third party account, and/or (3) who is requesting reauthorization of an existing use. Modifications to the terms and conditions of this agreement will not be accepted by DCS management.

Indicate here if this is a notification that the User named below no longer requires access:

User's Name (<i>print</i>):	
Naomi Haughey	
Organization:	
Davis Vision	
Telephone Number:	Area c [REDACTED]
Office Address:	
711 Troy Schenectady Rd, Latham, NY 12110	

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

User Signature: [REDACTED]	Date: 11/22/11
-------------------------------	-------------------

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

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



State of New York
 Department of Civil Service
 The State Campus
 Albany, New York 12239

ADMINISTRATIVE SERVICES DIVISION
 Third Party Connection and Data Exchange Agreement
 Attachment 4 – Equipment Loan Agreement
 ADM-125 (4/06)

Appendix C
 Page 11 of 16

THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT

ATTACHMENT 3 – THIRD PARTY ACCEPTABLE USE POLICY AND AGREEMENT

This Policy and Agreement applies to all forms of computer and networking use, including local access at the Department of Civil Service (DCS) premises, remote access via public or private networks, access using DCS equipment, access using individual or group accounts, and access via other methods.

A signed paper copy of this form must be submitted by any individual (1) for whom authorization of a new user account is requested, (2) who will use a shared third party account, and/or (3) who is requesting reauthorization of an existing use. Modifications to the terms and conditions of this agreement will not be accepted by DCS management.

Indicate here if this is a notification that the User named below no longer requires access:

User's Name (<i>print</i>):	
Judith Johnson	
Organization:	
Davis Vision	
Telephone Number:	Area code: [REDACTED]
Office Address:	
711 Troy Schenectady Rd, Latham, NY 12110	

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

User Signature: [REDACTED]	Date: 11/22/11
----------------------------	-------------------

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

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



State of New York
 Department of Civil Service
 The State Campus
 Albany, New York 12239

ADMINISTRATIVE SERVICES DIVISION
 Third Party Connection and Data Exchange Agreement
 Attachment 4 – Equipment Loan Agreement
 ADM-125 (4/06)

Appendix C
 Page 11 of 16

THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT
ATTACHMENT 3 – THIRD PARTY ACCEPTABLE USE POLICY AND AGREEMENT

This Policy and Agreement applies to all forms of computer and networking use, including local access at the Department of Civil Service (DCS) premises, remote access via public or private networks, access using DCS equipment, access using individual or group accounts, and access via other methods.

A signed paper copy of this form must be submitted by any individual (1) for whom authorization of a new user account is requested, (2) who will use a shared third party account, and/or (3) who is requesting reauthorization of an existing use. Modifications to the terms and conditions of this agreement will not be accepted by DCS management.

Indicate here if this is a notification that the User named below no longer requires access:

User's Name (<i>print</i>):	
Linda Mammoser	
Organization:	
Davis Vision	
Telephone Number:	Area code [REDACTED]
Office Address:	
711 Troy Schenectady Rd, Latham, NY 12110	

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

[REDACTED SIGNATURE]

Date:
 11/22/11

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

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



State of New York
 Department of Civil Service
 The State Campus
 Albany, New York 12239

ADMINISTRATIVE SERVICES DIVISION
 Third Party Connection and Data Exchange Agreement
 Attachment 4 – Equipment Loan Agreement
 ADM-125 (4/06)

Appendix C
 Page 11 of 16

THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT

ATTACHMENT 3 – THIRD PARTY ACCEPTABLE USE POLICY AND AGREEMENT

This Policy and Agreement applies to all forms of computer and networking use, including local access at the Department of Civil Service (DCS) premises, remote access via public or private networks, access using DCS equipment, access using individual or group accounts, and access via other methods.

A signed paper copy of this form must be submitted by any individual (1) for whom authorization of a new user account is requested, (2) who will use a shared third party account, and/or (3) who is requesting reauthorization of an existing use. Modifications to the terms and conditions of this agreement will not be accepted by DCS management.

Indicate here if this is a notification that the User named below no longer requires access:

User's Name (<i>print</i>):	
Crystal Thomas	
Organization:	
Davis Vision	
Telephone Number:	Area code [REDACTED]
Office Address:	
711 Troy Schenectady Rd, Latham, NY 12110	

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

[REDACTED]	Date: 11/22/11
------------	-------------------

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

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



State of New York
 Department of Civil Service
 The State Campus
 Albany, New York 12239

ADMINISTRATIVE SERVICES DIVISION
 Third Party Connection and Data Exchange Agreement
 Attachment 4 –Equipment Loan Agreement
 ADM-125 (4/06)

Appendix C
 Page 11 of 16

THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT

ATTACHMENT 3 – THIRD PARTY ACCEPTABLE USE POLICY AND AGREEMENT

This Policy and Agreement applies to all forms of computer and networking use, including local access at the Department of Civil Service (DCS) premises, remote access via public or private networks, access using DCS equipment, access using individual or group accounts, and access via other methods.

A signed paper copy of this form must be submitted by any individual (1) for whom authorization of a new user account is requested, (2) who will use a shared third party account, and/or (3) who is requesting reauthorization of an existing use. Modifications to the terms and conditions of this agreement will not be accepted by DCS management.

Indicate here if this is a notification that the User named below no longer requires access:

User's Name (<i>print</i>):	
Melissa Noonan	
Organization:	
Davis Vision	
Telephone Number:	Area code [REDACTED]
Office Address:	
711 Troy Schenectady Rd, Latham, NY 12110	

<i>The undersigned acknowledges that he or she has read, understands, and agrees to comply with this Third Party Acceptable Use Policy and Agreement governing the use of DCS computing resources.</i>	
User Signature: [REDACTED]	Date: 11/22/11

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

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



State of New York
 Department of Civil Service
 The State Campus
 Albany, New York 12239

ADMINISTRATIVE SERVICES DIVISION
 Third Party Connection and Data Exchange Agreement
 Attachment 4 – Equipment Loan Agreement
 ADM-125 (4/06)

Appendix C
 Page 11 of 16

THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT

ATTACHMENT 3 – THIRD PARTY ACCEPTABLE USE POLICY AND AGREEMENT

This Policy and Agreement applies to all forms of computer and networking use, including local access at the Department of Civil Service (DCS) premises, remote access via public or private networks, access using DCS equipment, access using individual or group accounts, and access via other methods.

A signed paper copy of this form must be submitted by any individual (1) for whom authorization of a new user account is requested, (2) who will use a shared third party account, and/or (3) who is requesting reauthorization of an existing use. Modifications to the terms and conditions of this agreement will not be accepted by DCS management.

Indicate here if this is a notification that the User named below no longer requires access:

User's Name (<i>print</i>):	
Michael Adams	
Organization:	
Davis Vision	
Telephone Number:	Area code [REDACTED]
Office Address:	
711 Troy Schenectady Rd, Latham, NY 12110	

<i>The undersigned acknowledges that he or she has read, understands, and agrees to comply with this Third Party Acceptable Use Policy and Agreement governing the use of DCS computing resources.</i>	
Us [REDACTED]	Date: 11/22/11

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

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



State of New York
 Department of Civil Service
 The State Campus
 Albany, New York 12239

ADMINISTRATIVE SERVICES DIVISION
Third Party Connection and Data Exchange Agreement
Attachment 4 – Equipment Loan Agreement
 ADM-125 (4/06)

Appendix C
 Page 11 of 16

THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT
ATTACHMENT 3 – THIRD PARTY ACCEPTABLE USE POLICY AND AGREEMENT

This Policy and Agreement applies to all forms of computer and networking use, including local access at the Department of Civil Service (DCS) premises, remote access via public or private networks, access using DCS equipment, access using individual or group accounts, and access via other methods.

A signed paper copy of this form must be submitted by any individual (1) for whom authorization of a new user account is requested, (2) who will use a shared third party account, and/or (3) who is requesting reauthorization of an existing use. Modifications to the terms and conditions of this agreement will not be accepted by DCS management.

Indicate here if this is a notification that the User named below no longer requires access:

User's Name (<i>print</i>):	
Frances Rosado	
Organization:	
Davis Vision	
Telephone Number:	Area code [REDACTED]
Office Address:	
711 Troy Schenectady Rd, Latham, NY 12110	

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

[REDACTED]	Date: 11/22/11
------------	-------------------

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

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



State of New York
 Department of Civil Service
 The State Campus
 Albany, New York 12239

ADMINISTRATIVE SERVICES DIVISION
 Third Party Connection and Data Exchange Agreement
 Attachment 4 –Equipment Loan Agreement
 ADM-125 (4/06)

Appendix C
 Page 11 of 16

THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT
ATTACHMENT 3 – THIRD PARTY ACCEPTABLE USE POLICY AND AGREEMENT

This Policy and Agreement applies to all forms of computer and networking use, including local access at the Department of Civil Service (DCS) premises, remote access via public or private networks, access using DCS equipment, access using individual or group accounts, and access via other methods.

A signed paper copy of this form must be submitted by any individual (1) for whom authorization of a new user account is requested, (2) who will use a shared third party account, and/or (3) who is requesting reauthorization of an existing use. Modifications to the terms and conditions of this agreement will not be accepted by DCS management.

Indicate here if this is a notification that the User named below no longer requires access:

User's Name (<i>print</i>):	
Nicholas Colbert	
Organization:	
Davis Vision	
Telephone Number:	Area code [REDACTED]
Office Address:	
711 Troy Schenectady Rd, Latham, NY 12110	

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

User Signature: [REDACTED]	Date: 11/22/11
-------------------------------	-------------------

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

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



State of New York
 Department of Civil Service
 The State Campus
 Albany, New York 12239

ADMINISTRATIVE SERVICES DIVISION
 Third Party Connection and Data Exchange Agreement
 Attachment 4 – Equipment Loan Agreement
 ADM-125 (4/06)

Appendix C
 Page 11 of 16

THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT
ATTACHMENT 3 – THIRD PARTY ACCEPTABLE USE POLICY AND AGREEMENT

This Policy and Agreement applies to all forms of computer and networking use, including local access at the Department of Civil Service (DCS) premises, remote access via public or private networks, access using DCS equipment, access using individual or group accounts, and access via other methods.

A signed paper copy of this form must be submitted by any individual (1) for whom authorization of a new user account is requested, (2) who will use a shared third party account, and/or (3) who is requesting reauthorization of an existing use. Modifications to the terms and conditions of this agreement will not be accepted by DCS management.

Indicate here if this is a notification that the User named below no longer requires access:

User's Name (<i>print</i>):	
Thomas Gallagher	
Organization:	
Davis Vision	
Telephone Number:	Area code [REDACTED]
Office Address:	
711 Troy Schenectady Rd, Latham, NY 12110	

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

User Signature: [REDACTED]	Date: 11/22/11
----------------------------	-------------------

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

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



State of New York
 Department of Civil Service
 The State Campus
 Albany, New York 12239

ADMINISTRATIVE SERVICES DIVISION
 Third Party Connection and Data Exchange Agreement
 Attachment 4 – Equipment Loan Agreement
 ADM-125 (4/06)

Appendix C
 Page 11 of 16

THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT

ATTACHMENT 3 – THIRD PARTY ACCEPTABLE USE POLICY AND AGREEMENT

This Policy and Agreement applies to all forms of computer and networking use, including local access at the Department of Civil Service (DCS) premises, remote access via public or private networks, access using DCS equipment, access using individual or group accounts, and access via other methods.

A signed paper copy of this form must be submitted by any individual (1) for whom authorization of a new user account is requested, (2) who will use a shared third party account, and/or (3) who is requesting reauthorization of an existing use. Modifications to the terms and conditions of this agreement will not be accepted by DCS management.

Indicate here if this is a notification that the User named below no longer requires access:

User's Name (<i>print</i>):	
Tenly Gregorio	
Organization:	
Davis Vision	
Telephone Number:	Area code [REDACTED]
Office Address:	
711 Troy Schenectady Rd, Latham, NY 12110	

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

[REDACTED]	Date: 11/22/11
------------	-------------------

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

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



State of New York
 Department of Civil Service
 The State Campus
 Albany, New York 12239

ADMINISTRATIVE SERVICES DIVISION
 Third Party Connection and Data Exchange Agreement
 Attachment 4 – Equipment Loan Agreement
 ADM-125 (4/06)

Appendix C
 Page 11 of 16

THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT
ATTACHMENT 3 – THIRD PARTY ACCEPTABLE USE POLICY AND AGREEMENT

This Policy and Agreement applies to all forms of computer and networking use, including local access at the Department of Civil Service (DCS) premises, remote access via public or private networks, access using DCS equipment, access using individual or group accounts, and access via other methods.

A signed paper copy of this form must be submitted by any individual (1) for whom authorization of a new user account is requested, (2) who will use a shared third party account, and/or (3) who is requesting reauthorization of an existing use. Modifications to the terms and conditions of this agreement will not be accepted by DCS management.

Indicate here if this is a notification that the User named below no longer requires access:

User's Name (<i>print</i>):	
David Clifford	
Organization:	
Davis Vision	
Telephone Number:	Area code [REDACTED]
Office Address:	
711 Troy Schenectady Rd, Latham, NY 12110	

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

[REDACTED]	Date: 11/22/11
------------	-------------------

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

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



State of New York
 Department of Civil Service
 The State Campus
 Albany, New York 12239

ADMINISTRATIVE SERVICES DIVISION
Third Party Connection and Data Exchange Agreement
Attachment 4 –Equipment Loan Agreement
 ADM-125 (4/06)

Appendix C
 Page 11 of 16

THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT

ATTACHMENT 3 – THIRD PARTY ACCEPTABLE USE POLICY AND AGREEMENT

This Policy and Agreement applies to all forms of computer and networking use, including local access at the Department of Civil Service (DCS) premises, remote access via public or private networks, access using DCS equipment, access using individual or group accounts, and access via other methods.

A signed paper copy of this form must be submitted by any individual (1) for whom authorization of a new user account is requested, (2) who will use a shared third party account, and/or (3) who is requesting reauthorization of an existing use. Modifications to the terms and conditions of this agreement will not be accepted by DCS management.

Indicate here if this is a notification that the User named below no longer requires access:

User's Name (<i>print</i>):	
David Holst	
Organization:	
Davis Vision	
Telephone Number:	Area code [REDACTED]
Office Address:	
711 Troy Schenectady Rd, Latham, NY 12110	

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

[REDACTED]	Date: 11/22/11
------------	-------------------

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

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



THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT

ATTACHMENT 3 – THIRD PARTY ACCEPTABLE USE POLICY AND AGREEMENT

I. *Protection of DCS Information*

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

II. *DCS Log-on Banner*

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

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

III. *Passwords*

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



IV. *Shared Accounts*

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

V. *Virus Protection*

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

VI. *Acceptable Use*

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

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

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

VII. *Software Protection*

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

VIII. *Reporting Incidents*

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



IX. *DCS Rights*

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

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

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

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

X. *Penalties*

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



Name And Address Of Borrower	DCS Business Unit (Loaning Organization)	
	Point Of Contact	
	Work Location	Telephone
Shipping Address (If different from borrower's)	Manager's Name	
	Date To Be Loaned	
	Date To Be Returned	

Equipment To Be Loaned

Quantity	Description	Value

Purpose Of Loan

CONDITIONS OF LOAN

1. The Borrower of the above equipment agrees to return same in like condition as received from DCS, normal wear and tear excepted, on or before the above return date, unless the loan period is formally extended.
2. Upon termination of this Agreement, Borrower shall uninstall all DCS software included in this Agreement from Borrower's computer and/or network equipment.
3. The Borrower shall not make any copies of DCS software included in this Agreement.
4. In case of loss or damage beyond repair, DCS shall be reimbursed by Borrower at the current price of replacement.
5. The equipment shall not be loaned or transferred to a third party without the written consent of DCS.
6. The right is reserved to cancel the loan or recall the equipment upon ____ days notice.
7. The Borrower shall assume all shipping and/or transportation costs involved.
8. Other conditions:



State of New York
 Department of Civil Service
 The State Campus
 Albany, New York 12239

ADMINISTRATIVE SERVICES DIVISION
Third Party Connection and Data Exchange Agreement
Attachment 4 –Equipment Loan Agreement
 ADM-125 (4/06)

Agreed (Borrower)	Approved (DCS)
Borrowing Organization	Loaning Organization
Signature Of Authorized Official	Signature Of Authorized Official
Title	Title
Date	Date
RECEIPT OF EQUIPMENT	
Borrower <i>(Upon initial receipt)</i>	DCS Lender <i>(Upon termination of Agreement)</i>
Borrowing Organization	Loaning Organization
Signature Of Authorized Official	Signature Of Authorized Official
Title	Title
Date	Date

July 2005