



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

**NEW YORK STATE VISION PLAN SERVICES
AGREEMENT #C000681**

between

**NEW YORK STATE
DEPARTMENT OF CIVIL SERVICE**

and

DAVIS VISION, INC.

2017-2021

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

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

Have business operations in Northern Ireland. Yes _____ or No _____

If yes:

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. Yes _____ or No _____

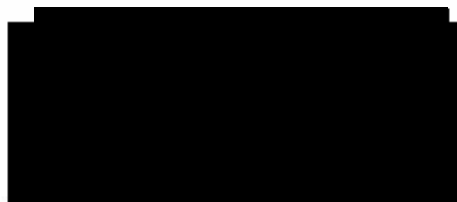
NON-COLLUSIVE BIDDING CERTIFICATION

By submission of this bid, each Offeror and each person signing on behalf of any Offeror 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 Offeror 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 Offeror and will not knowingly be disclosed by the Offeror prior to opening, directly or indirectly, to any other Offeror or to any competitor; and
3. No attempt has been made or will be made by the Offeror to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

Exhibit I.D – MacBride and Non-Collusive Bidding Certification

Date: 3/28/2016



Signature

PRINT:

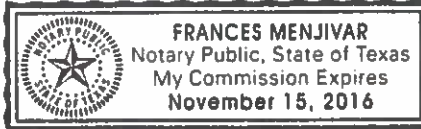
SIGNATORY'S NAME C. Scott Hamey

TITLE Chief Financial Officer

INDIVIDUAL, CORPORATE OR PARTNERSHIP ACKNOWLEDGMENT

STATE OF TEXAS }

SS.:



COUNTY OF BEXAR }

On the 20th day of MARCH in the year 2016 before me personally appeared:

C. SCOTT HAMEY, known to me to be the person who executed the foregoing

instrument, who, being duly sworn by me did depose and say that he resides at _____, Town of

SAN ANTONIO, County of BEXAR, State of TEXAS; and further that, if applicable:

[Check One, If Applicable]

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

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

Notary Public

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

AGREEMENT NO. C000681

THIS Agreement is entered into by and between New York State Department of Civil Service (“Department” or “DCS”), having its principal office at the Empire State Plaza, Agency Building #1, Albany, NY, 12239 and Davis Vision, Inc. (“Contractor”), a corporation authorized to do business in the State of New York with a principal place of business located at 175 East Houston Street, San Antonio, TX 78205, 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); 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 February 8, 2016, 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;

THEREFORE, the Parties agree as follows:

ARTICLE I: DEFINITION OF TERMS

- 1.1.0 Administrative Fee** means the monthly fee that the Contractor charges the Vision Program for all administrative services, exclusive of the Shared Communication Expense as calculated on a per Enrollee contract per Month basis.
- 1.2.0 Affiliate** means a person or organization which, through stock ownership or any other affiliation, directly, indirectly, or constructively controls another person or organization, is controlled by another person or organization, or is, along with another person or organization, under the control of a common parent.
- 1.3.0 Business Day(s)** means every Monday through Friday, except for days designated as business holidays.
- 1.4.0 Business Holiday(s)** means legal holidays observed by the State.
- 1.5.0 Calendar Year/Annual** means a period of 12 months beginning with January 1 and ending with December 31.
- 1.6.0 Call Center Hours** means between the hours of 8:00 a.m. until 8:00 p.m. ET, Monday through Friday, and between the hours of 9:00 a.m. to 4:00 p.m. ET on Saturday.
- 1.7.0 Child(ren)** means children under 19 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, and other children who reside permanently with the Enrollee in the Enrollee's household and are chiefly dependent on the Enrollee are also eligible, subject to a Statement of Dependence and documentation. Children who are unmarried full-time students and under the age of twenty-five (25). Children of Employees who are in SEHP are considered children up to age twenty-six (26) regardless of marital or student status.
- 1.8.0 Contractor** means successful Offeror selected as a result of the evaluation of Offerors' Proposals submitted in response to the RFP and who executes a contract with the Department to provide Program Services.
- 1.9.0 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.
- 1.10.0 Day(s)** means calendar days unless otherwise noted.

- 1.11.0 **DCS or Department** means the New York State Department of Civil Service.
- 1.12.0 **Dedicated Call Center** means a group of customer service representatives trained and capable of responding to a wide range of questions, complaints, and inquiries specific to the Program. The customer service representatives are dedicated to the Program and do not work on any other accounts.
- 1.13.0 **Dependent** means the spouses, domestic partners, children under nineteen (19) years of age, and unmarried full-time dependent student children under twenty-five (25) years of age enrolled in the Plan and determined to be eligible by the DCS. Unmarried young adult dependent children nineteen (19) years of age 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. Dependent children of Employees who are in SEHP are covered up to age twenty-six (26) regardless of marital or student status.
- 1.14.0 **Employee** means any person defined as an Employee in 4 NYCRR Part 73, as amended, or as modified by collective bargaining agreement.
- 1.15.0 **Employer** means “Employer” as defined in 4 NYCRR Part 73, as amended.
- 1.16.0 **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.
- 1.17.0 **Enrollee Submitted Claim or Subscriber Claim** means a claim for benefits submitted by an Enrollee to the Contractor for direct reimbursement.
- 1.18.0 **ET** means prevailing Eastern Time.
- 1.19.0 **Fulfillment Center** means the Department’s distribution center for publications supplied to Enrollees of New York State Agencies and Participating Employers (PEs).
- 1.20.0 **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.
- 1.21.0 **HIPAA** means Health Insurance Portability and Accountability Act of 1996, as amended.

- 1.22.0 **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.
- 1.23.0 **Key Subcontractor** means those vendors with whom the Contractor subcontracts to provide Program Services and incorporates as a part of the Contractor's Project Team.
- 1.24.0 **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.
- 1.25.0 **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.
- 1.26.0 **Member** means Enrollee or Dependent enrolled in the New York State Vision Plan.
- 1.27.0 **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.
- 1.28.0 **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.
- 1.29.0 **NYS** means New York State
- 1.30.0 **Occupational Vision Program** means a Program "by which," or "whereby" eligible Enrollees may obtain a second eyewear selection (intended for occupational use) from a Participating Provider, at the time the primary eyewear is ordered.
- 1.31.0 **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.

- 1.32.0 **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.
- 1.33.0 **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.
- 1.34.0 **Plan/Program** means the New York State Vision Plan.
- 1.35.0 **President** means the President of the Civil Service Commission and the Commissioner of the Department of Civil Service.
- 1.36.0 **Program/Plan** means the New York State Vision Plan.
- 1.37.0 **Program Services or Vision Plan Services** means all of the services to be provided by the Contractor as set forth in this Agreement.
- 1.38.0 **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.
- 1.39.0 **RFP or Procurement** means the Request for Proposals, entitled "New York State Vision Plan Services," dated February 8, 2016.
- 1.40.0 **State** means the DCS acting in its statutory authority as the administrator of New York State's Vision Plan.
- 1.41.0 **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.
- 1.42.0 **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, 2017 through and including December 31, 2021, 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 undertakings 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 Contracts;

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

4.1.5 Appendix C-1 – ITS-AGS: Information Security

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

4.1.7 Appendix D-1 - Minority and Women-Owned Business Enterprises-Equal Employment Opportunity Policy Statement;

4.1.8 Appendix D-2 –MWBE Utilization Reporting Responsibilities under Article 15-A;

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

- 4.1.9a** Exhibit A: which includes the MacBride Act Statement; and the Non-Collusive Bidding Certification;
- 4.1.9b** Exhibit B: the Request for Proposals entitled, "NYS Vision Plan," dated February 8, 2016 and Exhibit B-1, the official DCS response to questions raised concerning the RFP, dated March 8, 2016;
- 4.1.9c** Exhibit C: the Contractor's Proposal and Exhibit C-1: the official transcript of the Management Interview and related materials clarifying the contractor's proposal;
- 4.1.9d** Exhibit D, the Schedule of Participating Provider Fees;
- 4.1.9e** Exhibit E, the Schedule of Monthly Administrative Fees and Communications Fee;
- 4.1.9f** Exhibit F, the Schedule of Indemnity Reimbursement Fees; and
- 4.1.9g** Exhibit G, Summary of Benefit Variances by Employee Group;

4.1.10 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:

- 4.1.10a** First, Appendix A - Standard Clauses for all New York State contracts;
- 4.1.10b** Second, Appendix B - Standard Clauses for all Department of Civil Service contracts;
- 4.1.10c** Third, Appendix C – Third Party Connection and Data Exchange Agreement; Appendix C-1 ITS-AGS: Information Security
- 4.1.10d** Fourth, Appendix D: Participation by Minority Group Members and Women With Respect to State Contracts: Requirements and Procedures; Appendix D-1 Minority and Women-Owned Business Enterprises-Equal Employment Opportunity Policy Statement; and Appendix D-2: MWBE Utilization Reporting Responsibilities under Article 15-A;
- 4.1.10e** Fifth, any Amendments to the body of the Agreement;
- 4.1.10f** Sixth, the body of the Agreement;

4.1.10g Seventh, Exhibit A: which includes the MacBride Act Statement; and the Non-Collusive Bidding Certification; and

4.1.10h Eighth, Exhibit B – the Request for Proposals entitled, “NYS Vision Plan Services,” dated February 8, 2016 and Exhibit B-1, the official DCS response to questions raised concerning the RFP; and

4.1.10i Ninth, Exhibit C – the Contractor’s Proposal and Exhibit C-1, the official transcript of the Management Interview and related materials clarifying the Contractor’s proposal; and

4.1.10j Tenth, Exhibit D, the Schedule of Participating Provider Fees; and

4.1.10k Eleventh, Exhibit E, the Schedule of Monthly Administrative Fees and Communications Fee;

4.1.10l Twelfth, Exhibit F, the Schedule of Indemnity Reimbursement Fees; and

4.1.10m Thirteenth, Exhibit G, Summary of Benefit Variances by Employee Group.

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

ARTICLE V: LEGAL AUTHORITY TO PERFORM

5.1.0 The Contractor shall maintain appropriate corporate and/or legal authority, which shall include but is not limited to the maintenance of an administrative organization capable of delivering the Program Services in accordance with the Agreement and the authority to do business in the State of New York or any other governmental jurisdiction in which the Program Services are to be delivered.

5.2.0 Contractor agrees that it shall perform its obligations under this Agreement in accordance with all applicable Federal and NYS Laws, rules and regulations, policies and/or guidelines now or hereafter in effect.

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 Subcontractors. 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. All Key Subcontracts shall expressly name the State of New York, through the Department, as the sole intended beneficiary of any such Key Subcontract. The 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 such Key Subcontracts with no redactions to the Department before execution for its review and approval

6.2.0 Account Team

- 6.2.1** 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.
- 6.2.2** 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.
- 6.2.3** 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..
- 6.2.4** 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 or union representatives regarding member-specific claims issues for the duration of the Agreement to the satisfaction of the Department.

6.2.5 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 such as but not limited to, legislation, litigation, and operational issues.

6.2.6 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 in writing immediately. The Contractor must work with the Department to develop accurate Summary Plan Descriptions (SPDs) and/or NYS Vision Plan material.

6.2.7 The contractor must work with the Department to develop appropriate customized forms, letters and website content for the NYS Vision Plan, including but not limited to Enrollee claim forms, certification forms and letters, explanation of benefits, appeal letters, etc. All such communications must be approved by the Department prior to their distribution.

6.3.0 Plan Implementation

6.3.1 The Agreement includes an implementation period beginning on or around October 1, 2016. During this time, the Contractor must undertake and complete all implementation activities, including, but not limited to, those specified activities set forth in Article VII, Section 7.1.1 of this Agreement, no later than December 30, 2016, so that the Plan is fully operational on January 1, 2017.

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 8:00 p.m. ET, Monday through Friday, and between the hours of 9:00 a.m. and 4:00 p.m. ET on Saturday, 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 and customer service staff located in the United States to be utilized in the event the Dedicated Call Center 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 Department shall be notified of all regularly scheduled maintenance at least one (1) Business Day prior to such maintenance being performed. The Contractor must establish a dedicated link to the customized 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.
- 6.4.6 Provide resources to assist non-English speaking and hearing impaired Enrollees in order to address and resolve their questions.

6.5.0 Enrollee and Provider Communication Support

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

- 6.5.1 Designing and producing all necessary claim forms, benefit booklets, and other printed materials in sufficient quantities to promote and operate the Plan. Designing and producing a Participating Provider directory accessible on the offeror's dedicated NYS

Vision Plan website. All such materials are subject to the Department's review and approval.

- 6.5.2** Any regular standardized direct communication with Enrollees or their Vision Providers in connection with covered benefits or the processing of Enrollee claims.
- 6.5.3** Developing, printing and mailing to Enrollees' homes within 90 days of the Contractor's implementation date a customized listing of Participating Provider 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;
- 6.5.4** Shipping to HBAs Vision Plan Summary of Benefit Booklets equal to 3% of the Agency's Enrollee count by bargaining unit as of January 1, 2017. The Enrollee count by State agency by bargaining unit for October 2015 is included as Exhibit II.F for informational purposes.
- 6.5.5** Provide the Department Fulfillment Center with Vision Plan publications and ensure quantity on hand can meet the immediate needs of HBAs to supply each newly eligible employee throughout the term of the Agreement, and also provide replacement copies when requested.
- 6.5.6** 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 VIII; Paragraph 8.3.0 of the Agreement.
- 6.5.7** Accounting and paying for all development, production and mailing costs incurred to disseminate Plan communications materials to Enrollees and Department Fulfillment Center (excluding cost to ship publications from Department Fulfillment Center to HBAs and Enrollees).
- 6.5.8** The Department shall:
 - 6.5.8a** 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;

6.5.8b Make available, if possible, any records or information which the Contractor clearly needs to design and implement effective communication strategies; and

6.5.8c Assist the Contractor as necessary in communicating with Members and Providers but at no additional expense to the State, except as provided in Article VIII, Paragraph 8.3.0 of the Agreement

6.5.9 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.

6.5.10 Attending health benefit fairs located in New York State, at the request of the Department.

6.6.0 Enrollment Management

The Contractor will be responsible for the maintenance of an accurate, complete and up-to-date enrollment files, located in the United States, 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 and data files.

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 [REDACTED] 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 [REDACTED] 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 (see Exhibit II.G for a detailed record layout). 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; and
- 6.6.3** Meeting the administrative requirements for National Medical Support Notices. A child covered by a Qualified Medical 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 Enrollee/Dependent data contained in the enrollment file. The Contractor 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 agree to the policies, terms and conditions stated in Exhibit B, the 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 resulting.
- 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 prior to authorization of Vision Plan services for all employee groups (except for those covered by SEHP) for Dependents age nineteen through twenty-four, 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.
- 6.6.9 Ensuring the provider portal is updated timely and accurately regarding Enrollee eligibility status, to permit participating providers to verify eligibility for services.

6.7.0 Reporting

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

- 6.7.1 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;
- 6.7.2 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; and
 - 6.9.2c Reports to meet clinical program review needs

6.7.3 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 XIV of this Agreement.

6.8.0 Collective Bargaining and Legislative Implementation

The Contractor is responsible for providing advice and analysis of the financial and Enrollee impact of proposed benefit design changes resulting from collective bargaining and/or federal and state legislation. Such responsibility shall include, but not be limited to:

6.8.1 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. In the event of a design change and should the Contractor request any change in compensation, any such change will be processed in accordance with Article VIII, Modification of Program Services.

6.8.2 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 in accordance with Article VIII, Modification of Program.

6.9.0 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:

6.9.1 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. (Laser Vision Correction providers should not be included in the Offeror's Participating Provider Network):

- 6.9.1a [REDACTED] percent of Enrollees in urban areas will have at least one (1) Participating Provider within five (5) miles of an Enrollee's home;
- 6.9.1b [REDACTED] percent of Enrollees in suburban areas will have at least one (1) Participating Provider within fifteen (15) miles of an Enrollee's home; and
- 6.9.1c [REDACTED] percent of Enrollees in rural areas will have at least one (1) Participating Provider within thirty (30) miles of an Enrollee's home.
- 6.9.1d 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.

6.9.2 Laser Vision Correction Participating Provider Network

- 6.9.2.a The Offeror must develop and maintain a regional network of qualified, credentialed ophthalmologists that provides reasonable access to Enrollees and Dependents to provide laser vision correction services through both a covered benefit and discount program.
 - 6.8.2a(1) [REDACTED] percent of Enrollees urban areas will have at least [REDACTED] Laser Vision Correction Participating Provider within [REDACTED] miles of an Enrollee's home;
 - 6.8.2a(2) [REDACTED] percent of Enrollees in suburban areas will have at least [REDACTED] Laser Vision Correction Participating Provider within [REDACTED] miles of an Enrollee's home;
 - 6.8.2a(3) [REDACTED] percent of Enrollees in rural areas will have at least [REDACTED] Laser Vision Correction Participating Provider within fifty [REDACTED] miles of an Enrollee's home;
- 6.9.2.b The Offeror 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.

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

6.9.3 Participating Provider and Laser Vision Correction Provider Credentialing

6.9.3a The Contractor must assure its network is credentialed in accordance with all applicable federal and state laws, rules and regulations.

6.9.3b 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.

6.9.3c The Contractor must develop and maintain a regional network of qualified, credentialed ophthalmologists that provides reasonable access to Enrollees and Dependents to provide laser vision correction services through both a covered benefit and discount program.

6.9.3d 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.

6.9.3e At the request of the Department, the Contractor must solicit additional Laser Vision Correction Participating Providers to participate in the Laser Vision Correction Network.

6.9.4 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:

6.9.4.a 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.

6.9.4.b 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.

6.9.5 Network Administration and Quality Assurance

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

6.9.5a Developing and distributing communication materials to Participating Providers and Laser Vision Correction Participating Providers introducing the Plan and describing changes, when necessary;

6.9.5b 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;

6.9.5c 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.

6.10.0 Claims Processing

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

6.10.1 Maintaining a claims processing center located in the United States staffed by fully trained claims processors and supervisors.

6.10.2 Verifying that the Plan's benefit designs have been loaded into the system appropriately to adjudicate and calculate cost sharing and other edits correctly;

6.10.3 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;

6.10.4 Charging the Plan consistent with the Contractor's proposed pricing quotes;

6.10.5 Developing and maintaining claim payment procedures, guidelines, and system edits that guarantee accuracy of claim payments for covered services only; utilizing all edits

as proposed by the Contractor and approved by the Department. The Contractor's system must ensure that payments are made only for authorized services

- 6.10.6** 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;
- 6.10.7** 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;
- 6.10.8** 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;
- 6.10.9** 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;
- 6.10.10** Maintaining the security of the claim files and ensuring HIPAA compliance;
- 6.10.11** 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.
- 6.10.12** 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;
- 6.10.13** Analyzing and monitoring claim submissions to promptly identify errors, fraud and/or abuse and reporting to the State such information in a timely fashion in accordance with a State approved process. The Contractor will credit the Program the amount of any overpayment regardless of whether any overpayments are recovered from the Provider and/or Enrollee in instances where a claim is paid in error due to Contractor error, without additional administrative charge to the Program. The Contractor shall report fraud and abuse to the appropriate authorities. In cases of overpayments resulting from errors only found to be the responsibility of the State, or due to fraud and abuse the Contractor shall use reasonable efforts to recover any overpayments and credit 100% of any recoveries to the Vision Plan; however, the Contractor is not responsible to credit amounts that are not recovered;

- 6.10.14 Processing Enrollee submitted claims using the non-network fee schedule set forth in Exhibit F
- 6.10.15 Adjusting all attributes of claim records processed in error crediting the Program for the amount of the claim processed in error;
- 6.10.16 Establishing a process through which Providers can verify eligibility of Enrollees and Dependents during Call Center Hours;

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 [90] Basic frame styles, [80] Standard frame styles and [52] Enhanced frame styles. 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.

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 soft, daily-wear, planned replacement and disposable contact lenses, subject to Plan benefit coverages set forth in Exhibit II.D.
- 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 Contractor must administer a \$200 contact lens benefit for Enrollees and covered Dependents in NYSCOPBA, Council 82, PBANYS, 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 e.g., variations in lens type, strength, or segment height differential, for occupational vision needs, in accordance with the negotiated benefit design by employee group. The eligibility criteria includes, but is not limited to:

6.13.1a [REDACTED]; or

6.13.1b [REDACTED]; or

6.13.1c [REDACTED];

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 Occupational Vision Program eligibility criteria to Participating Providers and ensure that they properly administer 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 ensure that they properly administer 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, cataracts, 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. The Contractor must also communicate the Upgrade Program to Enrollees to ensure their awareness of its availability.

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 to the following guarantees and the corresponding credit amounts for failure to meet the Contractor Performance Guarantees. The Contractor acknowledges and agrees that failure to perform the Program Service features in such a manner which either meets or exceeds any or all of the Contractor Performance Guarantee(s) as set forth in this Article VII, and/or fails to make payment(s) of any such credit amounts for such failure to meet any Performance Guarantee(s) does not relieve the Contractor of the performance of the activities, duties and obligations as otherwise set forth in the Agreement. Credit amounts are cumulative. Amounts due from the Contractor to the Department for failure to perform and audit credit amounts, as determined pursuant to Article XII of this Agreement, shall be made in such amounts as determined by the Department to be final. Upon such determination, the Department shall notify the Contractor, in writing, and the Contractor shall apply such amounts as a credit against the Administrative Fee in accordance with Article XII of this Agreement within thirty (30) Days of receiving such notification by the Department. These amounts must also be applied as a credit against the Administrative Fee as a separate line item, and reported in the Annual Financial Report

7.1.0 Implementation and Start-up Guarantees and Credit Amount

7.1.1 Guarantee: The Contractor guarantees that all Implementation and Start-Up activities will be completed no later than December 30, 2016, so that, effective January 1, 2017, the Contractor can assume full operational responsibility for the Plan. For the purpose of this Service Level Standard, the Contractor must, on January 1, 2017, have in place and operational:

- 7.1.1a** its contracted Participating Provider Network that meets the access standard set forth in Section 6.9.1 of this Agreement;
- 7.1.1b** its contracted Laser Vision Correction Participating Provider Network that provides reasonable access as defined by the Contractor;
- 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 6.10.0 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 Credit Amount: The Contractor's quoted percent to be credited for each day that all implementation and Start-Up requirements are not met is [REDACTED] of the [REDACTED] (prorated on a daily basis).

7.2.0 Customer Service Telephone Guarantees and Credit Amount

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

7.2.1 Customer Service Availability

7.2.1a Guarantee: The Plan's service level standard requires that the Contractor's telephone line will be operational and available to Members and Providers at least [REDACTED] of the Contractor's proposed customer service telephone line availability (minimum scheduled time between the hours of 8:00 a.m. and 8:00 p.m. ET, Monday through Friday; and between the hours of 9:00 a.m. and 4:00 p.m. ET on Saturday, 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;

7.2.1b Credit Amount: The Contractor's quoted amount to be credited against the Monthly Administrative Fee for each [REDACTED] that the Contractor's telephone line is not operational and available to Members and Providers during the Contractor's Call Center Hours, as calculated on a Calendar Year basis, is \$ [REDACTED].

7.2.2 Customer Service Telephone Response Time

7.2.2a Guarantee: 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 [REDACTED]. 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;

7.2.2b Credit Amount: The Contractor's quoted amount to be credited against the Monthly Administrative Fee for each [REDACTED] below the standard of ninety percent (90%) that incoming calls to the Contractor's customer service toll-free line that are not answered by a customer service representative within [REDACTED], as calculated on a Calendar Year basis, is \$ [REDACTED].

7.2.3 Telephone Abandonment Rate

7.3.3a Guarantee: 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;

7.3.3b Credit Amount: The Contractor's quoted amount to be credited against the Monthly Administrative Fee for each [REDACTED] of incoming calls to the Contractor'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 \$ [REDACTED].

7.2.4 Telephone Blockage Rate

7.2.4a Guarantee: 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.

7.2.4b Credit Amount: The Contractor's quoted amount to be credited against the Monthly Administrative Fee for each [REDACTED] of incoming calls to the Contractor's telephone line that are blocked by a busy signal, in excess of one percent (1%) as calculated on a Calendar Year basis, is \$ [REDACTED].

7.3.0 Website Maintenance

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

7.3.2 Credit Amount: 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 \$ [REDACTED];

7.4.0 Enrollment Management Guarantees and Credit Amount

7.4.1 Guarantee: 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.

7.4.2 Credit Amount: The Contractor's quoted amount to be credited against the Monthly Administrative Fee for each twenty- four (24) hour period or portion thereof 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 Contractor's enrollment system, is \$ [REDACTED]

7.5.0 Management Reports and Claims Files Guarantee and Credit Amount

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

7.5.2 Credit Amount: The Contractor's quoted amount to be credited against the Contractor's Monthly Administrative Fee for each management report or claim file listed in Article XIV that is not received by its respective due date, is \$ [REDACTED] 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.

7.6.0 Participating Provider Access Guarantee and Credit Amount

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

7.6.1a 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;

7.6.1b 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

7.6.1c 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).

7.6.2 Credit Amount:

7.6.2a The Contractor's quoted amount to be credited against the Contractor's Monthly Administrative Fee is \$ [REDACTED] for each [REDACTED] % below the ninety-eight percent (98%) minimum access standard 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.

7.6.2b The Contractor's quoted amount to be credited against the Contractor's Monthly Administrative Fee is \$ [REDACTED] for each [REDACTED] the ninety-eight percent (98%) minimum access standard 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.

7.6.2c The Contractor's quoted amount to be credited against the Contractor's Monthly Administrative Fee is \$ [REDACTED] for each [REDACTED] % below the ninety-eight percent (98%) minimum access standard 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.

7.7.0 Turnaround Time for Receiving Eyewear and Credit Amount

7.7.1 Guarantee: 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.

7.7.2 Credit Amount: The Contractor's quoted amount to be credited against the Contractor's Monthly Administrative Fee for each [REDACTED] % 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 \$ [REDACTED].

7.8.0 Occupational Vision Program Utilization

7.8.1 Guarantee: 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 and nine-tenths percent (50.9%), 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 Credit Amount:** The Contractor's quoted amount to be credited against the Contractor's Monthly Administrative Fee for each ██████% above the Plan's Occupational Vision Program utilization rate standard of fifty and nine-tenths percent (50.9%), as calculated on a calendar year basis is \$ ██████.

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 Department 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 Department shall notify the Contractor of such changes and shall provide the Contractor with reasonable notice to implement such changes.
- 8.3.0** To the extent that any of the events as set forth in this Article shall take place and constitute a material and substantial change in the delivery of services that are contemplated in accordance with the terms of the Plan as of the Effective Date and which the Contractor is required to perform or deliver under the Agreement, either Party may submit a written request to initiate review of the fee(s) received by the Contractor for services provided and guarantees made by the Contractor under the terms of the Agreement, accompanied by appropriate documentation. The Department reserves the right to request, and the Contractor shall agree to provide additional information and documentation the Department deems necessary to verify that a modification of the fees or guarantees is warranted. The DCS will agree to modify the fee(s) to the extent necessary to compensate the Contractor for documented additional costs determined by DCS to be reasonable and necessary. The Contractor will agree to modify the fee (s) to the extent necessary to relieve the DCS of the obligation to pay for Program services that are no longer required. The DCS will agree to modify guarantees as determined by DCS to be necessary to reflect Vision Program modifications. Should the Parties agree to modify the fee(s) and/or guarantees, such approval shall be subject to written

amendment and approval by OSC and the AG. The Contractor shall implement changes as required by the DCS with or without final resolution of any fee proposal.

ARTICLE IX: DEVELOPMENT OF SUMMARY PLAN DESCRIPTIONS AND BENEFIT SUMMARIES

9.1.0 The Contractor shall present to the Department its recommendations for the development of the necessary Summary Plan Descriptions and Benefit Summaries for the NYS Vision Plan for each of its unions and groups. The Department shall review the Contractor's recommendations and shall make the final determination regarding the manner in which the Summary Plan Descriptions and Benefit Summaries shall be developed and issued by the Contractor. Contractor's recommendations must be submitted to the Department thirty (30) days prior to release of the Summary Plan Descriptions and Benefit Summaries.

ARTICLE X: ENROLLMENT INFORMATION AND RECORDS

10.1.0 The Contractor shall maintain records in the United States from which may be determined at all times the names of all Enrollees covered hereunder, and their dependents, 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.

10.2.0 The Department 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.

10.3.0 The Department and the Enrollees/Dependents shall furnish to the Contractor all information that the Contractor may reasonably require with regard to any matters pertaining to the enrollment of Enrollees/ Dependents under this Agreement. A person will not be entitled to or deprived of benefits under the Agreement due to clerical errors.

10.4.0 The Department agrees to provide the Contractor with reasonable access to records of the Department which may have a bearing on the benefits provided by the Contractor or calculation of the Contractor's Administrative Fee as set forth under Article XIII of this Agreement.

ARTICLE XI: DATA SHARING AND OWNERSHIP

11.1.0 All claims and other data related to the Plan is the property of the State. Upon the request of the Department, the Contractor shall share claims data with NYSHIP carriers, Department

consultants, the Department's Decision Support System contractor, and the Department of Health's all payer claims database.

- 11.2.0** Except as directed by a court of competent jurisdiction, in New York State or as necessary to comply with applicable New York State or Federal law, or with the written consent of the Enrollee/Dependent, the Contractor shall not share, sell, release, or make the data available to third parties in any manner without the prior written consent of the Department.

ARTICLE XII: PAYMENT FOR PLAN CLAIMS

- 12.1.0** The Contractor will bill the DCS on a monthly basis for Plan claims, including Participating Provider and Enrollee submitted claims. Payments will be electronically transferred to the Contractor upon approval by DCS and the Office of the State Comptroller.
- 12.2.0** 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).
- 12.3.0** 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).
- 12.4.0** 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 XIII: ADMINISTRATIVE FEE AND COMMUNICATIONS FEE

- 13.1.0** 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 received prior written approval by the

Director of the Employee Benefits Division and any costs related to or associated with the preparation and submission of a competitive proposal, including but not limited to the Contractor's Proposal, Exhibit C.

- 13.2.0** The per Enrollee Administrative Fees for the Plan shall be paid in accordance with Exhibit E of this Agreement.
- 13.3.0** The DCS shall calculate the total Administrative Fees payable to the Contractor for each month by multiplying the per 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.
- 13.4.0** 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 6.5.3, 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.
- 13.5.0** 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 writing, at least thirty (30) days in advance by DCS, prior to their release. The Contractor shall be reimbursed only for approved communications costs. All other communication expenses shall be the sole responsibility of the Contractor.

ARTICLE XIV: REPORTS AND CLAIMS FILES

14.1.0 Semi-Annual Reports

14.1.1 Utilization Reports: The Contractor shall submit semi-annual utilization reports which detail Plan utilization by type of service and employee group for both Participating Provider and Indemnity claims, including services provided under the Occupational Vision Program and the Medical Exception Program, as well as referrals to the Laser Vision Correction Program. Additionally, for the Medical Exception Program, the Contractor must report the

number of authorized services by medical condition and employee group. The reports are due sixty (60) days after the end of the reporting period.

14.1.2 Enrollee Satisfaction Survey Summary Reports: The Contractor shall submit Semi-Annual Enrollee Satisfaction Survey Summary Reports which summarize by employee group, the results of Enrollee satisfaction surveys designed to evaluate the level of Enrollee satisfaction with the Plan. The surveys should cover the quality of Participating Provider services and Plan materials (frames, glasses, and contacts), as well as satisfaction with customer service and administrative aspects of the Plan. The format of the reports is subject to NYS input and approval. The reports are due sixty (60) days after the end of the reporting period.

14.2.0 Quarterly Report

14.2.1 Quarterly Performance Guarantee Reports: The Contractor shall submit Quarterly Performance Guarantee reports which detail the Contractor's compliance with all the Performance Guarantees set forth in this Agreement. The reports should include the areas of customer service, eyewear turnaround time, and enrollment and Provider access. Statistical documentation of compliance should be included in these reports. The reports are due sixty (60) days after the end of the quarter.

14.2.2 Quarterly Participating Employer Payment Summary Report: The Contractor must submit a summary report of the payments made by the Contractor on behalf of each Participating Employer during the three previous months. This report will serve as the basis for Participating Employer billings, thus should include sufficient detailed claims data for a Participating Employer to verify that it was correctly billed for covered members. Similarly, the report should exclude amounts paid on behalf of direct pay Enrollees (i.e., COBRA). The report is due fifteen (15) days after the end of the calendar year quarter.

14.3.0 Monthly Reports

14.3.1 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.

14.3.2 Monthly Payment Summary: The Contractor shall submit on a monthly basis a summary of the claims that were processed for the month reported, issued and paid on

behalf of the New York State Vision Plan. Such report shall separately identify claims for State employees from those of Participating Employers and include a summarized breakout by service type. This report shall serve as the billing to the New York State Vision Plan. The report is due ten (10) days after the end of the month being reported.

14.4.0 Ad Hoc Reports

14.4.1 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 XV: GRACE PERIOD

15.1.0 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 XII, Payments for Plan Claims and Article XIII, 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.

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

ARTICLE XVI: TRANSITION AND TERMINATION OF CONTRACT

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

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

16.1.1a Transition of Plan data, history, report formats and unique information required for a smooth transition to a new Contractor;

16.1.1b Completion of all such services associated with claims incurred on or before the scheduled termination date of the Agreement.

16.2.0 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.

16.3.0 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.

16.4.0 The Contractor shall be responsible for transitioning the Plan in accordance with the approved Transition Plan.

16.5.0 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:

16.5.1 Provide all Contractor provided services associated with claims incurred on or before the scheduled termination date of the Agreement, including but not limited to paying Participating Provider and Laser Vision Correction Provider claims and Enrollee Submit claims;

16.5.2 Complete all required reports in Article XIV "Reports and Claims Files";

16.5.3 Provide the Program with sufficient staffing in order to address State audit requests and reports in a timely manner;

16.5.4 Agree to fully cooperate with all the Department or Office of NYS Comptroller audits consistent with the requirements of Appendices A and B;

16.5.5 Perform timely reviews and responses to audit findings submitted by the Department and the Comptroller's audit unit in accordance with the requirements set forth in Article XVII "Audit Authority";

16.5.6 Remit reimbursement due the Program within fifteen (15) Days upon final audit determination consistent with the process specified in Article XVII "Audit Authority" and Appendix B; and

16.6.0 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.

16.7.0 If the selected Contractor does not meet all of the Transition Plan requirements in the time frame stated above, the Contractor **will permanently forfeit 100%** of all 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 XVII: AUDIT AUTHORITY

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

17.1.0 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;

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

17.2.1 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).

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

17.2.3 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 XIV – "Reports and Claims Files", of this Agreement.

17.3.0 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;

17.4.0 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,

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

17.5.1 Providing ample audit resources through the date of the final financial settlement of the Agreement;

17.5.2 The capability and contractual right of the State to effectively audit the Contractor including the use of statistical sampling audit techniques and the extrapolation of errors. If statistical estimate techniques are used, such estimates shall be at the 95% confidence level with precision of +/- 3% of the population; and

17.5.3 Providing full cooperation with all Department and/or OSC audits consistent with the requirements of Appendices A and B and as set forth in this Agreement including provision of access to protected health information and all other confidential information when required for audit purposes as determined by the Department and/or OSC as appropriate. The Contractor must respond to all State (including OSC) audit requests for information and/or clarification within fifteen (15) Business Days. The Contractor must perform timely reviews and respond in a time period specified by the Department to preliminary findings submitted by the Department or the OSC's audit unit in accordance with the requirements of Article XVII "Audit Authority" in this Agreement. Such audits may include, but are not limited to both electronically

submitted and paper claims. Use of statistical sampling of claims and extrapolation of findings resulting from such samples shall be acceptable techniques for identifying claims errors. If statistical estimate techniques are used, such estimates shall be at the 95% confidence level with precision of +/- 3% of the population. The Contractor shall facilitate on-site audits at Contractor's site of the Department's claims and the Contractor's credentialing records of Network Providers as requested by the Department and/or OSC. In the instance of the Contractor's Network Provider records and Department's claims showing evidence of corruption, gross mishandling, insufficient auditing practices, lack of scope and/or other conditions resulting in data that is inaccurate or inadequate, the Contractor shall facilitate on-site audits of Network Providers as requested by the Department and/or OSC.

- 17.6.0** 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;
- 17.7.0** 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.
- 17.8.0** 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.
- 17.9.0** 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 XVIII: CONFIDENTIALITY

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

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

ARTICLE XIX: USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION

- 19.1.0** For purposes of this Agreement, the term "Protected Health Information" ("PHI") means any information, including demographic information collected from an individual, that relates to the

past, present, or future physical or mental health or condition of an individual, to the provision of health care to an individual, or to the past, present, or future payment for the provision of health care to an individual, that identifies the individual, or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual. Within the context of this Agreement, PHI may be received by the Contractor from 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."

19.2.0 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, 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.

19.3.0 *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 Contract if such use is necessary for the Contractor's proper management and administration or to carry out the Contractor's legal responsibilities, or if such disclosure is required by law or the Contractor obtains reasonable assurances from the person to whom the information is disclosed that it shall be held confidentially and used or further disclosed only as required by law or for the

purpose for which it was disclosed to the person, and the person notifies the Contractor of any instances of which it is aware in which the confidentiality of the PHI has been breached.

19.4.0 *Nondisclosure of the Department's PHI:* The Contractor shall not use or further disclose the Department's PHI other 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.

19.5.0 *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.

19.6.0 *Breach Notification:*

19.6.1 *Reporting:* The Contractor shall report to the Department any breach of unsecured PHI, even if the breach is not reportable under HIPAA, 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.

19.6.2 *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) Days from the date of discovery:

19.6.2a the date of the breach incident;

19.6.2b the date of the discovery of the breach;

19.6.2c a brief description of what happened;

19.6.2d a description of the types of unsecured PHI that were involved;

19.6.2e identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the breach;

19.6.2f 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

19.6.2g any other details necessary to complete an assessment of the risk of harm to the individual.

19.6.3 The Department will be responsible for providing notification to individuals whose unsecured PHI has been or is reasonably believed to have been accessed, acquired or disclosed as a result of a breach, as well as the Secretary and the media, as required by 45 CFR Part 164.

19.6.4 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.

19.6.5 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.

19.6.6 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.

19.7.0 Associate's Agents: The Contractor shall require all of its agents or Key Subcontractors or Affiliates 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, to agree, in writing, 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.

19.8.0 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.

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

19.10.0 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.

19.11.0 Termination:

19.11.1 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.

19.11.2 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.

19.12.0 Indemnification: The Contractor agrees to indemnify, defend and hold harmless the State, the Department and Department's 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 Article or from any acts or omissions related to this Article by the Contractor or its employees, officers, Key Subcontractors or Affiliates, 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 under this Article shall survive the expiration or termination of this Agreement.

19.13.0 Miscellaneous:

- 19.13.1 Amendments:** This Article 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 Article from time to time as is necessary to achieve and maintain compliance with the requirements of 45 CFR Parts 160-164.
- 19.13.2 Survival:** The respective rights and obligations of the Business Associate (Contractor), and Covered Entity under HIPAA as set forth in this Article shall survive termination of this Agreement.
- 19.13.3 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.
- 19.13.4 Interpretation:** Any ambiguity in this Article shall be resolved to permit covered entities to comply with HIPAA.

ARTICLE XX: NOTICES

20.1.0 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: David J. Boland
Title: Director, Employee Benefits Division
Address: Employee Benefits Division, Room 1106, Albany, NY 12239
Telephone Number: 518-473-1977
Facsimile Number: 518-473-3292
E-Mail Address: [REDACTED]

Davis Vision, Inc.

Name: --
Title: Director of Contracting
Address: 175 E. Houston St., San Antonio, TX 78205
Telephone Number: 210-524-7602
Facsimile Number: 210-245-2377
E-Mail Address: [REDACTED]

20.2.0 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.

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

ARTICLE XXI: IRAN DIVESTMENT ACT

21.1.0 As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) was charged with the responsibility to develop a list (Prohibited Entities List) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list was posted to the OGS website on August 10, 2012.

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

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

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

ARTICLE XXII: VENDOR RESPONSIBILITY

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

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

22.2.0 The Contractor shall at all times during the Agreement term remain responsible. The Contractor agrees, if requested by the Commissioner or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

22.3.0 Suspension of Work (for Non-Responsibility): The Commissioner or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when he or she discovers information that call into question the responsibility of the Contractor. In the event of such suspension, the Contractor must comply with the terms of the suspension order. Agreement activity may resume at such time as the Commissioner or his or her designee issues a written notice authorizing a resumption of performance under the Agreement.

22.4.0 Termination (for Non-Responsibility): Upon written notice to the Contractor, a reasonable opportunity to be heard with the appropriate Department officials or staff, the Contract may be terminated by the Commissioner or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of the Department or his or her designee to be non-responsible. In such an event, the Commissioner or his or her designee may complete the requirements of the Agreement in any manner he or she may deem advisable and pursue legal or equitable remedies for breach.

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APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

**PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.**

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.

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

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

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

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: [REDACTED]

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

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

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

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

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS.

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

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.

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

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

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

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

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

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

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

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

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

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

APPENDIX B
STANDARD CLAUSES FOR ALL DEPARTMENT CONTRACTS

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1. INTEGRATION

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

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

2. EXECUTORY PROVISION

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

3. CHOICE OF LAW

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

4. DISPUTE RESOLUTION

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

5. WAIVER OF BREACH

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

6. NEW YORK STATE REQUIREMENTS

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

7. OUTSIDE OF SCOPE

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

8. NON-ASSIGNABILITY

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

9. NOTIFICATION

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

10. INDEMNIFICATION

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

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

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

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

11. PATENT, COPYRIGHT OR PROPRIETARY RIGHTS INFRINGEMENT

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

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

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

12. DATE/TIME WARRANTY

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

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

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

13. VIRUS WARRANTY

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

14. TITLE AND OWNERSHIP WARRANTY

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

15. USE RESTRICTIONS AND INTELLECTUAL PROPERTY

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

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

16. OWNERSHIP/TITLE TO PRODUCT DELIVERABLES

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

(A) Definitions

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

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

3. Custom Product(s):

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

(B) Title to Project Deliverables

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

1. Existing Product(s):

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

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

2. Custom Product(s):

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

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

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

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

3. Documentation, Data & Reports

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

17. FORCE MAJEURE

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

18. TIME OF THE ESSENCE

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

19. RIGHTS AND REMEDIES

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

20. FEDERAL AND STATE COMPLIANCE

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

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

21. TAXES

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

22. INDEPENDENT CONTRACTOR

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

23. NO THIRD PARTY BENEFICIARIES

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

24. HEADINGS OR CAPTIONS

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

25. PARTIAL INVALIDITY

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

26. CONFLICT OF INTEREST

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

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

27. AUDIT AUTHORITY

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

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

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

28. CONFIDENTIALITY

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

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

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

29. INFORMATION SECURITY REQUIREMENTS

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

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

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

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

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

30. NONDISCLOSURE OF CONFIDENTIAL INFORMATION

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

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

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

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

This representation shall survive termination of the Agreement.

31. FREEDOM OF INFORMATION LAW

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

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

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

32. TERMINATION OF AGREEMENT

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

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

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

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

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

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

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

33. CONTRACTOR PERSONNEL

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

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

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

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

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

34. OPERATIONAL CONTACTS

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

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

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

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

35. SUBCONTRACTING

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

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

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

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

36. PUBLICITY AND COMMUNICATIONS

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

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

37. CONSULTANT DISCLOSURE REQUIREMENTS

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

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

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

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

39. VENDOR RESPONSIBILITY

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

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

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

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

41. CONTRACT PAYMENT

Contractor shall provide complete and accurate billing invoices to the Department in order to receive payment. Billing invoices submitted to the Department must contain all information and supporting documentation required by the Agreement, the Department and the State Comptroller. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at www.osc.state.ny.us/epay/index.htm, by e-mail at [REDACTED], 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

APPENDIX C-1

ITS-AGS: INFORMATION SECURITY STANDARDS

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1. Secure System Development Life Cycle Standard

ITS has defined a Secure Systems Development Lifecycle (SSDLC) based on the NIST framework. These SSDLC security requirements and tasks must be considered and addressed within every system, project or application and sufficiently documented to demonstrate the extent to which each security activity is applied.

At a minimum, a SSDLC must contain the following security activities:

1. Define Security Roles and Responsibilities
2. Orient Staff to the SDLC Security Tasks
3. Establish a System Criticality Level
4. Classify Information
5. Establish System Identity Assurance Level Requirements
6. Establish System Security Profile Objectives
7. Create a System Profile
8. Decompose the System
9. Assess Vulnerabilities and Threats
10. Assess Risks
11. Select and Document Security Controls
12. Create Test Data
13. Test Security Controls
14. Perform Certification and Accreditation
15. Manage and Control Change
16. Measure Security Compliance
17. Perform System Disposal

Additional information is found in policy *NYS-S13-001 Secure System Development Life Cycle*, see Table 1 in section 2.

2. New York State Information Technology Security Policies

Every system, project or application must comply with the New York State Information Technology Security Policies, published by the NYS Enterprise Information Security Office (EISO) at its.ny.gov/eiso/policies/security, that are applicable to it. These policies are listed in the table below.

Table 1

NYS-P03-002	Information Security Policy
NYS-P10-006	Identity Assurance Policy

NYS-P13-001	Information Security Exception Policy
NYS-P14-001	Acceptable Use of Information Technology (IT) Resources Policy
NYS-S10-001	CPE Requirements for ISOs/Designated Security Representatives Standard
NYS-S13-001	Secure System Development Life Cycle (SSDLC) Standard
NYS-S13-002	Secure Coding Standard
NYS-S13-003	Sanitization/Secure Disposal Standard
NYS-S13-004	Identity Assurance Standard
NYS-S13-005	Cyber Incident Response Standard
NYS-S14-001	Information Security Risk Management Standard
NYS-S14-002	Information Classification Standard
NYS-S14-003	Information Security Controls Standard
NYS-S14-005	Security Logging Standard
NYS-S14-006	Authentication Tokens Standard
NYS-S14-007	Encryption Standard
NYS-S14-008	Secure Configuration Standard
NYS-S14-009	Mobile Device Security Standard
NYS-S14-010	Remote Access Standard
NYS-S14-013	Account Management / Access Control Standard
NYS-S15-001	Patch Management Standard
NYS-S15-002	Vulnerability Scanning Standard
NYS-S15-003	Wireless Technology Standard
NYS-G10-001	Secure Use of Social Media Guideline

3. Information Security and Emergency Procedures

New York State considers the security and protection of State information to be a critical aspect of this engagement.

Contractor agrees to comply with the following requirements:

- Comply with all federal and state security policies in relation to providing services to ensure the confidentiality, integrity and availability (CIA) of NYS data.
- NYS follows NIST 800-53 guidelines for implementing system security and privacy controls. Vendors should also be aware of the FedRAMP program when implementing systems for NYS.
- Run NYS Enterprise Information Security Office (EISO) approved security scans specified in policy *NYS-S15-002 Vulnerability Scanning Standard* prior to the launch of any major changes to the [enter project name], as well as follow policy *NYS-S13-001 Secure System Development Life Cycle*.
- Undergo a data classification in conjunction with [enter agency name] to identify the criticality of the data being collected and stored.
- Share all vendor's third party audit reports with the State.
- Allow the State to verify implementation of recommendations resulting from the third party audits.
- In the event of a security breach, as defined by State Technology law Section 208, the Contractor shall act in accordance with New York State Breach Notification Law.
- Contractor is required to submit, as part of its overall security plan, a Protection and Risk Assessment Plan for the management of the State's confidential information. The Protection and Risk Assessment Plan is expected to include Contractor's technology- and non-technology-based process for securing the State's confidential information. At a minimum, the Protection and Risk Assessment Plan must address the areas listed below.
 - Ensuring and certifying that employees, subcontractors, and business partners are aware of and comply with NYS information security and confidentiality requirements.
 - Documentation to detail the extent to which each security activity listed in section 1. *Secure System Development Life Cycle Standard* is followed.
 - Security reviews and audits, including third-party reviews, audits, and facility audits.
 - Use of security tools and standards (e.g., security software, encryption standards, etc.).

- Maintaining and enhancing the bidder's information security environment and business practices with procedures and policies for a security environment aligning with industry best practices.

Contractor is expected to provide copies of Continuity of Operations Plan (COOP) and Disaster Recovery Plan (DRP) plans for all data, records, forms, and data processing operations associated with [enter project name]. **The following areas should be addressed as part of the security documentation:**

- Establish procedures to ensure its data processing system will be back in at least minimal operation within [insert time constraint].
- Ensure complete, accurate and up-to-date documentation of all systems and procedures used to operate [enter project name]. This documentation shall include a back-up copy stored encrypted, where appropriate, off premises (New York State data should not reside outside of the continental United States).
- Redundant architectures, based on the criticality of data, e.g. Tier III data center; regular file back-ups; and continuous 24-hour monitoring required for hosted environments.
- Provide recovery procedure training for all personnel and refresher training at least annually.

4. Cloud Security Requirements

If cloud based services are a component of the solution or services to be provided by Contractor, Contractor must comply with FedRAMP (<https://www.fedramp.gov>) standards for cloud services, and other applicable federal and New York State laws, regulations and requirements.



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

175 E. Houston Street San Antonio, Texas 78205


(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: Davis Vision, Inc.	NYS Department of Civil Service (DCS)
Authorized Signature 	Authorized Signature
Name (Print) C. Scott Hamey	Name (Print)
Date September 15, 2016	Date



THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT

ATTACHMENT 1 – SECURITY REQUIREMENTS

1. *Right to Use Connection*

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

2. *Data Exchange*

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

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

3. *Network Security*

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

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

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

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

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



- 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 Albany, New York 12239
Address: 175 E. Houston Street San Antonio, TX 78205	
Attention: Derek Vorpahl	Attention:



5. *Citizen Notifications*

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

6. *Payment of Costs*

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

7. *Confidentiality*

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



8. *Third Party Users*

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

9. *DCS-owned Equipment*

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

10. *Term, Termination and Survival*

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



11. Severability

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

12. Waiver

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

13. Assignment

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

14. Force Majeure

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

15. Partial Invalidity

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



THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT

ATTACHMENT 2 – REQUEST REQUIREMENTS

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

Part 1 – Business Justification

A. DCS Sponsor (Division Director)

Name:

David Boland

Division:

Employee Benefits Division

Office Location:

NYS Department of Civil Service
Albany, New York 12239

Phone Number:

518-473-1977

Email Address:

[Redacted]

Back-up Point of Contact: (Data Custodian)

Name:

Barbara Vaughn

Division:

Employee Benefits Division

Office Location:

NYS Department of Civil Service
Albany, New York 12239

Phone Number:

518-549-2328

Email Address:

[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 which requires member enrollment files to be transmitted to and received from Davis Vision, Inc. Limited Davis Vision staff will have inquiry access to NYBEAS to verify Vision Plan enrollment.

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?

[Redacted]

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]

Method of Disposal of media and paper:

[Redacted]

User Account Management, including review of accounts:

[Redacted]

Physical Security:

[Redacted]

Other:



E. Estimated number of hours of use each week?

- 1 – 20
- 21 – 40
- More than 40 hours per week

F. Anticipated normal hours of use?

- M – F, 8:00 – 5:00 pm Eastern time
- Other (specify):

SAT 9:00-4:00 EST

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

Not Applicable. Because this is a renewal agreement processes are already in place.

H. Approximately how long will the connection be needed?

- Up to 6 months
- 6 – 12 months
- More than 12 months

- Specific time period:

01/01/2017-12/31/2021

Appendix C
Page 9 of 16

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

I. Other useful information

J. Third Party Information

Name of Third Party:

Davis Vision

Main Office Address:

175 E. Houston Street

Management Contact

Name:

Dianne Roberson

Address:

711 Troy Schenectady Rd., Suite 301 |

Latham, NY 12110

Phone Number:

[Redacted]

Manager's Phone:

[Redacted]

Main Phone Number:

Department:

Client Management

Email Address:

[Redacted]

Manager's Name:

Teresa



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

<u>Associate Name</u>	<u>Associate Email Address</u>	<u>Phone Number</u>
Susan Scicchitano		
Donald Iachetta		
Gwen Chamberlain		
Barbara Ayers		
Jonathan vonMaucher		
Arthur Goodrum		
Wendy Fosco		
Judy Sendra		
Stacey Leombruno		
Andrei Yermakov		
Jose Taveras		
Lisa Serra		
John O'Rourke		
Shawn Rondeau		
Tracy Blowers		

K. Other information



THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT

ATTACHMENT 3 – THIRD PARTY ACCEPTABLE USE POLICY AND AGREEMENT


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

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

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

User's Name (<i>print</i>):			
Davis Vision, Inc.			
Organization:			
Telephone Number:	Area code	Number	Extension
Office Address:			
175 E. Houston Street San Antonio, TX 78205			

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: 09/15/2016
--	---------------------

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: ITS Enterprise Service Desk**



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 ITS Enterprise Service Desk at 518-474-2433.



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 Not Applicable	DCS Business Unit (Loaning Organization)	
	Point Of Contact	
	Work Location	Telephone
Shipping Address (<i>If different from borrower's</i>)	Manager's Name	
	Date To Be Loaned	
	Date To Be Returned	

Equipment To Be Loaned		
Quantity	Description	Value

Purpose Of Loan

CONDITIONS OF LOAN

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:



Agreed (Borrower)	Approved (DCS)
Borrowing Organization	Loaning Organization
Signature Of Authorized Official	Signature Of Authorized Official
Title	Title
Date	Date

RECEIPT OF EQUIPMENT

Borrower (Upon initial receipt)	DCS Lender (Upon termination of Agreement)
Borrowing Organization	Loaning Organization
Signature Of Authorized Official	Signature Of Authorized Official
Title	Title
Date	Date

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

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

I. General Provisions

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

II. Contract Goals

- A. For purposes of the Contract, the Department established an overall goal of 1% for Minority and Women-Owned Business Enterprises (“MWBE”) participation as subcontractors and suppliers, as relates only to the administrative cost component of the overall cost of the Contract.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in section II-A above, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address:
<http://www.nylovesmwbe.ny.gov/cf/search.cfm>

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

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

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

III. Equal Employment Opportunity (EEO)

- A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Contractor shall comply with the following provisions of Article 15-A:
 1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 2. The Contractor shall submit an EEO policy statement to the Department within seventy two (72) hours after the date of the notice by Department of proposed award of the Contract to the Contractor.
 3. If Contractor or subcontractor does not have an existing EEO policy statement, the Department may provide the Contractor or subcontractor a model statement (see Form EEO-102 entitled "Minority and Women-Owned Business Enterprises M/WBE - Equal Employment Opportunity (EEO) Policy Statement).
 4. The Contractor's EEO policy statement shall include the following language:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
 - d. The Contractor will include the provisions of sections (a) through (c) of this subsection 4 and paragraph "E" of this section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.
- C. Form EEO-100 – EEO Staffing Plan

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

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

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

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

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

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

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

V. Waiver Requests (MWBE-101)

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

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

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

VII. Liquidated Damages - MWBE Participation

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

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

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

VII. Further Information:

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

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

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

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

**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL
EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

M/WBE AND EEO POLICY STATEMENT

I, _Davis Vision, Inc., the (awardee/contractor) agree to adopt the following policies with respect to the project being developed or services rendered at the New York State Department of Civil Service.

M/WBE

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from the Department and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. The Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

EEO

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.

(b) This organization shall state in all solicitation 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 disability or marital status.

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized 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 this organization's obligations herein.

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

(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract

Agreed to this 15th day of September, 2016

By _____

Print: C. Scott Hamey Title: Chief Financial Officer

Ali Gonsalves is designated as the Minority Business Enterprise Liaison
(Name of Designated Liaison)
responsible for administering the Minority and Women-Owned Business Enterprises- Equal
Employment Opportunity (M/WBE-EEO) program.

M/WBE Contract Goals

- % Minority and Women's Business Enterprise Participation
- % Minority Business Enterprise Participation
- % Women's Business Enterprise Participation

EEO Contract Goals

- % Minority Labor Force Participation
- % Female Labor Force Participation

(Authorized Representative)

Title: Chief Financial Officer

Date: September 15, 2016



Division of Minority and Women's Business Development

Your MWBE Utilization and Reporting Responsibilities Under Article 15-A

The New York State Contract System ("NYSCS") is your one stop tool compliance with New York State's MWBE Program. It is also the platform New York State uses to monitor state contracts and MWBE participation.

GETTING STARTED


To access the system, you will need to login or create a user name and password at <https://ny.newnycontracts.com>. If you are uncertain whether you already have an account set up or still need to register, please send an email to the customer service contact listed on the Contact Us & Support page, or reach out to your contract's project manager. For verification, in the email, include your business name and contact information.

VENDOR RESPONSIBILITIES

As a vendor conducting business with New York State, you have a responsibility to utilize minority- and/or women-owned businesses in the execution of your contracts, per the MWBE percentage goals stated in your solicitation, incentive proposal or contract documents. NYSCS is the tool that New York State uses to monitor MWBE participation in state contracting. Through the NYSCS you will submit utilization plans, request subcontractors, record payments to subcontractors, and communicate with your project manager throughout the life of your awarded contracts.

There are several reference materials available to assist you in this process, but to access them, you need to first be registered within the NYSCS. Once you log onto the website, click on the **Help & Support** >> link on the lower left hand corner of the Menu Bar to find recorded trainings and manuals on



all features of the NYSCS. You may also click on the  icon at the top right of your screen to find videos tailored to primes and subcontractors. There are also opportunities available to join live trainings, read up on the "Knowledge Base" through the Forum link, and submit feedback to help improve future enhancements to the system. Technical assistance is always available through the **Contact Us & Support** link on the NYSCS website (<https://ny.newnycontracts.com>).

For more information, contact your project manager.

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

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

Have business operations in Northern Ireland. Yes _____ or No _____

If yes:

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. Yes _____ or No _____

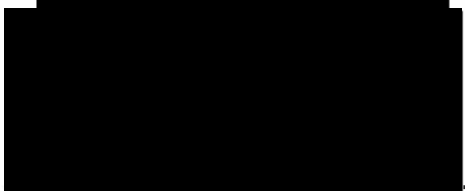
NON-COLLUSIVE BIDDING CERTIFICATION

By submission of this bid, each Offeror and each person signing on behalf of any Offeror 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 Offeror 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 Offeror and will not knowingly be disclosed by the Offeror prior to opening, directly or indirectly, to any other Offeror or to any competitor; and
3. No attempt has been made or will be made by the Offeror to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

Exhibit I.D – MacBride and Non-Collusive Bidding Certification

Date: 3/28/2016



Signature

PRINT:

SIGNATORY'S NAME C. Scott Hamey

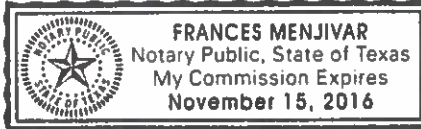
TITLE Chief Financial Officer

INDIVIDUAL, CORPORATE OR PARTNERSHIP ACKNOWLEDGMENT

STATE OF TEXAS }

SS.:

COUNTY OF BEXAR }



On the 20th day of MARCH in the year 2016 before me personally appeared:

C. SCOTT HAMEY, known to me to be the person who executed the foregoing

instrument, who, being duly sworn by me did depose and say that he resides at _____, Town of

SAN ANTONIO, County of BEXAR, State of TEXAS; and further that, if applicable:

[Check One, If Applicable]

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

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

Notary Public

2017 -2021 NYS Vision Contract

Placeholder for Exhibit B

Exhibit B: 2016 Request for Proposals entitled, “New York State Vision Plan Services” dated February 8, 2016; and Amendments dated March 8, 2016.

**New York State Department of Civil Service
Request for Proposals #Vision Plan-2016-1
New York State Vision Plan Services
Official Answers to Offerors Questions**

Following are the Department's answers to questions regarding the New York State Vision Plan Services RFP.

Note: If the Offeror's questions included their name, the name has been replaced with "Offeror."

Questions and Answers as of March 8, 2016

<u>Section</u>	<u>Question and Answer</u>
Q1 Section I Page 1-2	Can you tell me if the State will accept and consider fully insured Vision plan proposals? Unfortunately, the Offeror does not offer an administrative services only product for Vision at this time.
A1	As the Department outlined in Section I.B of the RFP, the NYS Vision Plan is a self-funded benefit. Additionally, Section V.A.1 states the "NYS Vision Plan contract is for Administrative Services Only (ASO); the NYS Vision Plan is not insured". The Department seeks to enter into contract with an Offeror to administer the benefit as such.
Q2 Section I Page 1-3	Does the Department of Civil Service anticipate there to be any changes to the enrollment in the New York State Vision Plan in the future?
A2	The Department does not foresee any material changes to enrollment outside fluctuations due to the overall size of the NYS and PE workforce.
Q3 Section I Page 1-4	Please clarify what is meant by "exam for only refraction services are not covered."
A3	<p>The exam benefit is for comprehensive exam services, which is defined and administered as follows in the current provider manual as:</p> <p>"A comprehensive ocular assessment to evaluate the physiologic function and anatomic structure of the eye must be performed for all patients. All eye examinations must meet all existing state regulations. The general eye assessment should include, but not be limited to, the following:</p> <ul style="list-style-type: none"> • Assessment of current acuity, distance and near, using the member's present corrective lenses, if applicable; • External ocular evaluation, including slit lamp examination; • Internal ocular examination; • Tonometry; • Refraction – objective and subjective; • Binocular coordination and ocular motility evaluation; • Evaluation of pupillary function; • Biomicroscopy; and • Gross visual fields. <p>A Dilated Fundus Examination must be included whenever professionally indicated."</p>

That is what members are entitled to. Therefore, claims submitted for refraction only services from a participating or non-participating provider will not be paid.

Q4 Section I
Page 1-5

What testing and criteria do current Participating Providers use during regular vision examinations to determine eligibility for job-related eyeglasses offered through the Occupational Vision Program?

A4

Current participating provider criteria for Occupational benefit is as follows:

(a) Work area above eye level for more than one (1) hour per day will qualify for a Double-D bifocal

(b) Occupational eyewear must be different from the dress eyewear in one of the following ways:

(i).50D spherical power

(ii) Lens type (i.e. single vision to bifocal; or

(iii) 5 mm or greater variation of segment height.

Testing provided by participating provider for Occupational eyeglasses includes refractive status and binocular function at computer distance, color vision and depth perception.

As stated in Section IV of this RFP, “the occupational eyewear must differ from the primary eyewear based on criteria established by the Offeror and consistent with the Occupational Vision Program benefits specified in the Summary of Covered Benefit by Group, Exhibit II.D of this RFP.”

Per collective bargaining agreements, sunglasses, polarized lenses and photochromatic lenses are permitted under the Occupational program only for Employees of the following groups: PBA-S, PBA-T, or PIA.

Q5 Section I
Page 1-6

What percentage of enrollees’ copayments for laser vision correction surgery capped at \$200?

A5

Since 2012, 91% of enrollees met the \$200 copay for laser vision correction surgery.

Q6 Section IV
Page 4-6

What contract award date will the Department of Civil Service commit to that will allow Offerors to appropriately assess confidence levels associated with the Implementation and Start-Up Guarantee?

A6

The Department cannot commit to a specific award date. DCS anticipates an implementation period of between 90-120 days from the date of OSC’s approval of the contract. The effective date of benefit coverage will immediately follow the implementation period and the Department expects such date to be January 1, 2017.

Q7 Section IV
Page 4-7

Historically, approximately how many member and provider calls are received each year? How many calls did the incumbent receive in 2015?

- A7** The number of calls from members of the NYS Vision Plan for each of the following years are as follows:
- 2013 – 23,571
 2014 – 26,401
 2015 – 23,002
- The number of calls from participating providers of the NYS Vision Plan cannot be given, as that number could not be carved out from provider calls for other employee benefit programs.
- Q8** Section IV
 Page 4-12 Can the Department quantify the total number of Vision Plan materials by type of material and recipient for Plan year 2015?
- For example, in 2015, how many Benefit Booklets were mailed to new enrollees?
- A8** **Currently, new Enrollees receive a welcome kit and Vision Summary of Benefits Booklet. In 2015, the Vision Summary of Benefit Booklets and welcome kits mailed to new enrollees were in the amount of 8,400 each.**
- Q9** Section IV
 Page 4-13 How many times, on average, per year, does the Contractor need to replenish supply of Summary of Benefit Booklets to HBAs?
- A9** **As mentioned in Section IV.4.b.(4) Summary booklets are to be supplied to HBAs equal to 3% of agency enrollment, this occurs once during implementation. Thereafter the Summary of Benefit Books should be mailed to the Fulfillment Center. We do not have historical data that can provide the number of times the Fulfillment Center will have to be replenished. However, quantities on hand at the Fulfillment Center must be able to meet the needs of HBAs for new enrollees and replacement copies for each benefit group. For 2015, 8,400 booklets were mailed to new enrollees; this figure also includes ad hoc requests of enrollees for replacement copies.**
- Q10** Section IV
 Page 4-12 Within 90 days of implementation, Contractor must develop, print and mail to enrollees' homes a customized listing of Participating Providers and a Vision Plan Summary of Benefits booklet. Is the provider listing limited to providers in New York?
- A10** **No, the Participating Provider listing should not be limited to the state of New York as there are enrollees who live in states other than NY. Currently, enrollees receive a listing of participating providers within in a 50 mile radius. If there, no participating providers within that radius, they are notified as such.**
- Q11** Section IV
 Page 4-13 Can the Department specify what types of Vision Plan publications are provided to the Department's Fulfillment Center? Historically, how often does the Contractor need to replenish the Fulfillment Center's Supply? What was the quantity of each of these publications supplied in 2015?
- A11** **The Summary of Benefits Booklet will need to be provided to the Fulfillment Center. The Department cannot advise how often Summary of Benefit Books need to be mailed to the Fulfillment Center as this is a new requirement under the contract. However, quantities on hand at the**

Fulfillment Center must be able to meet the needs of HBAs so booklets for new enrollees and replenishment copies can be provided. For 2015, 8,400 booklets were mailed to new enrollees which also includes ad hoc requests.

- Q12** Section IV
Page 4-14 Annually, approximately how many health fairs and employee meetings are held?
- A12** **Health fairs occur throughout the New York State at various agency locations. The number of health fairs attended over the past three years are as follows:**
2013 – 12
2014 – 24
2015 – 12
- Exhibit III.I is added to present the list of health fairs attended in 2015.**
- Q13** Section IV
Page 4-15 Will the selected Offeror be required to produce identification cards?
- A13** **Identification cards are not required to be presented in order to obtain benefits. Both of the past two vendors did issue a card to enrollees**
- Q14** Section IV
Page 4-15 Will the selected Offeror be required to assign alternate identification numbers or will they be assigned by the Department of Civil Service?
- A14** **DCS will not assign alternative identification numbers for this program; additionally, current alternative identification numbers for this program are not accepted by our enrollment system.**
- Q15** Section IV
Page 4-15 If an Offeror currently receives enrollment files from the Department of Civil Service, will enrollment files associated with the Vision Plan be provided on a separate 834 file?
- A15** **Yes, a separate enrollment file/transactions capturing Vision Plan enrollment will be provided.**
- Q16** Section IV
Page 4-15 If an Offeror currently receives enrollment files from the Department of Civil Service and will not be receiving a separate enrollment file, will they receive separate eligibility transaction records on their existing enrollment file?
- A16** **Please see response to Question 15.**
- Q17** Section IV
Page 4-23 Are there any unions up for negotiation over the term of the 5-year agreement?
- A17** **It is anticipated that all of the unions will be up for negotiation over the term of the 5-year agreement.**
- Q18** Section IV
Page 4-30 Please confirm the Standard Credit Amount, it currently states "...for each .01 to 10% below the ninety-five percent (95%) minimum access standard...." (9.b.(5)(b)). Should this state "...for each .01 to 1.0%" instead?

- A18** The performance guarantee in Section IV.B.9.b. (5)(b) should read: “*The Standard Credit Amount for each .01 to 1.0%...*”. See page 4-30 of amended Section IV.
- Q19** Section IV
Page 4-41 Can the Department please provide a list of the current contact lens brands that are part of the incumbent’s “standard” selection?
- A19** The contact lens brands that are a part of the incumbent’s standard selection are as follows:
- Planned Replacement:**
Biofinity CooperVision
Frequency Aspheric CooperVision
- Disposables:**
2 Week ACUVUE 2 Vistakon
2 Week ACUVUE OASYS Vistakon
2 Week Biomedics 55 Premiere CooperVision
Daily ClearSight™ 1-Day CooperVision
Daily 1-Day ACUVUE MOIST Vistakon
ACUVUE OASYS for ASTIGMATISM Vistakon
Biomedics Toric CooperVision
ACUVUE OASYS for PRESBYOPIA Vistakon
- Please refer to Section IV.B.12 of the RFP regarding Contact Lens Selection.**
- Q20** Section IV
Page 4-41 Do all Participating Providers dispense from formulary selection when dispensing lenses? If not, what percent of providers contact lens claims are from the incumbent formulary?
- A20** **Not all contact lenses dispensed by participating providers were from the current contact lens formulary. Since 2012, 76% of contact lenses dispensed by participating providers were outside of the formulary and enrollees utilized their contact lens allowance; while 24% of dispensed contact lenses were from the current formulary and covered under the collection allowance.**
- Q21** Section IV
Page 4-41 Does the contact lens allowance include the contact lens fit and follow up? Are they separate today?
- A21** **The contact lens fit and follow-up is separate from the contact lens allowance for all groups when done at a participating provider. The contact lens fit and follow up occurs at no charge to enrollees and dependents when done at a participating provider. Please refer to Exhibit III.A for the contact lens fitting utilization.**
- When services are received from an out of network provider, the contact lens allowance is applied to the fitting fee and contact lens materials. For NYSCOPBA, Council 82, PBANYS, PBA and PIA enrollees and dependents, the \$184 out of network allowance is applied to the contact lens fitting and contact lens materials. For PEF and M/C enrollees and dependents, the \$40 out of network allowance is applied to the cost of the contact lens fitting and contact lens materials. Please refer to Exhibit III.E for the out of network**

reimbursement schedule.

- Q22** Section V
Page 5-3 In the Cost Proposal Requirements section it states “The Administrative Fee Per Enrollee fees shall be quoted on a per Enrollee per month basis.”
- Please confirm Offerors should be proposing Administrative Fees as a PEPM (Per Enrollee Per Month meaning employee or subscriber) or PMPM (meaning Per Member Per Month including all employees or subscribers and their eligible dependents).
- Section II: Introduction states the “The NYS Vision Plan currently has close to 103,767 Enrollees with approximately 256,530 covered members.”
- Section VIII: Glossary of Terms, defines Enrollee as “Employee” or “Dependent.”
- A22** **The Administrative Fee should be quoted and will be assessed on the number of employees (enrollees) or approximately 103,767, please see Section I.**
- Q23** Appendix D Under Contract Goals section of Appendix D, it states that the overall goal for Minority and Women-Owned Enterprises has been established as 20% of the administrative cost component of the Contract. This goal differs from the goal of 1% outlined in Section II: Procurement Protocol and Process (Page 2-22). Please confirm goal percentage is 1%.
- A23** **Confirmed, please see amended Appendix D.**
- Q24** Exhibit I.Z Per Exhibit I.Z, once completed Confidentiality Agreement and Certificate of Non-Disclosure is submitted offers will be provided detailed claims data however this does data does not appear to have been provided on the CD we received on 2/11/16.
- A24** **Offerors will not be provided with any detailed claims data. Exhibit II.B contains only NYSHIP enrollment counts by zip code. Exhibit I.Z is a general Confidentiality Agreement and Certificate of Non-Disclosure used by the Department.**
- Q25** Exhibit II.A Is enrollment data for the period 2012-2015, either annual or monthly subscriber/member counts available? If so, can the Department provide this data?
- A25** **Average annual subscriber contracts are as follows for years 2012-2015:**
2012 – 104,043
2013 – 104,353
2014 – 103,629
2015 – 103,858
- Q26** Exhibit II.C Do dependents age out at the end of the month or end of the calendar year in which are no longer eligible?
- A26** **Dependents are removed from the plan at the end of the month in which they lose eligibility due to age.**

Exhibit B-1

- Q27** Exhibit III.A What percentage of the frames dispensed within each retail price band were from the current carriers' frame formulary (tower) vs. frames available from the providers standard inventory?
- A27** **56% of all dispensed frames were from the incumbent's current frame collection; while 44% of all dispensed frames were non-collection frames and obtained by members under their frame allowance.**
- Q28** Exhibit III.D Are monthly amounts for both paid claims and ASO fees available? If so, can they be provided by the Department?
- A28** **Please see the added Exhibit III.D.1 for information regarding the claims expenses and administrative expenses paid by month from 2012 through 2015.**
- Q29** Exhibit III.D Are August – December 2015 paid claims and ASO fee data available? If so, can they be provided by the Department?
- A29** **Yes, please review amended Exhibit III.D for information regarding the claims expenses and administrative expenses paid from 2012 through 2015.**

2017 -2021 NYS Vision Plan

Placeholder for Exhibit C and C-1

Exhibit C: Contractor's Proposal; and **Exhibit C-1:** Written responses to Clarifying Questions regarding Contractor's Proposal.

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

Type of Service	Offeror's Proposed Unit Price 2017	Offeror's Proposed Unit Price 2018	Offeror's Proposed Unit Price 2019	Offeror's Proposed Unit Price 2020	Offeror's Proposed Unit Price 2021
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					
Contacts					
Conventional/ Standard					
Disposable/ Premium					
<i>Lens options (in additional to base lens price):</i>					
High Index					
Glass					
Ultraviolet Coating					
Photosensitive Glass					
Photosensitive Plastic					
Polycarbonate					
Plastic Progressive Vision Lenses					
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
Administrative Fees and Communications Fee Schedule**

	2017	2018	2019	2020	2021
Proposed 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.B.4.a. (3),(4) of the RFP.

Note: Fees must be expressed in fixed dollar amounts.

NYS Vision Plan Indemnity Reimbursement Schedule

Exhibit F

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>PBANYS</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),(5)	Eligible for Medical Exception Program	Eligible for MEP Exam (4)	Eligible for Laser Vision Correction
Council 82 (arbitration eligible)	28 days	Covered up to age 19, age 19 to 25 if 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
Council 82 (contract affected)	28 days	Covered up to age 19, age 19 to 25 if 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
NYSCOPBA (arbitration eligible)	56 days	Covered up to age 19, age 19 to 25 if 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
NYSCOPBA (contract affected)	56 days	Covered up to age 19, age 19 to 25 if 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
M/C & unrepresented (includes PEs)	56 days (effective 7/1/08)* *waiting period for PEs varies by agency	Covered up to age 19, age 19 to 25 if 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 to 25 if 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 to 25 if 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 to 25 if 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
PEF	56 days	Covered up to age 19, age 19 to 25 if 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
PBANYS	56 days	Covered up to age 19, age 19 to 25 if 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
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) COBRA enrollees are not eligible for Occupational Benefits