

New York State Office of Temporary And Disability Assistance

Electronic Benefits Transfer (EBT) Services

Contract Terms and Conditions (01/11/13)

Appendix 13

AGREEMENT

The following terms and conditions will constitute the basis for the contract between the selected Offeror and the State of New York. The other NCS members will execute similar contracts.

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ARTICLE 1 - Agreement, Duration, and Amendment

A. Contract Duration

1. This Agreement shall commence on or about August 1, 2014 or the date of the final required approval by the Contracting State Agency's (CSA) approval agencies (e.g., NYS' Office of State Comptroller) and shall continue for seven (7) years, subject to the terminations provisions (Article 16) and the acceptance criteria contained herein. Any reference in the Agreement to "CSA" shall be deemed to include the State on behalf of which the CSA acts; any reference to "State" shall be deemed to reference the CSA where appropriate.
2. Up to two extensions of up to 12 months each may be required at the sole discretion of the CSA. Any extension will be subject to necessary approvals by the CSA's approval agencies. Except as set forth in paragraphs B and C of this Article, the terms and conditions of this Agreement shall remain unchanged throughout the duration of any such extension. Contractor will be informed by the CSA of its decision to exercise such extension(s) no less than 90 calendar days prior to the expiration date of the contract (for the first extension), and no less than 90 calendar days prior to the termination of the first extension (for the second extension).

B. This Agreement is subject to amendment only upon mutual consent of the parties, reduced to writing and approved as required by the CSA.

C. Notwithstanding Section A of this Article, the CSA and the Contractor shall have the right to renegotiate the terms and conditions of the Agreement in the event applicable State legislative or administrative policy, rules, regulations, actions and guidelines are altered from those existing at the time this Agreement is executed in order to be in continuous compliance therewith to the extent this Agreement is impacted by any such change. The Contractor shall be entitled to reasonable compensation for increased costs to be incurred as a result of any changes pursuant to this paragraph. It shall be understood that, in the event the CSA and the Contractor are unable to mutually agree to a set of terms and conditions through renegotiations, the terms and conditions required to continue this Agreement in compliance with revised State legislative or administrative policy, rules, regulations, actions and guidelines shall be decided by the head of the CSA having executed this Agreement or his/her duly authorized representative(s) or designee(s), in accordance with Article 10 of this Agreement, Interpretations and Disputes. However, should such changes to laws or regulation result in a reduction in the Contractor's responsibilities/efforts in providing services, a like reduction in pricing will be negotiated in good faith, based upon an equal sharing of contract-related savings.

D. In the event applicable Federal, Quest, or applicable cash access network policy, rules, regulations and guidelines are altered from those existing at the time this Agreement is executed and in order to be in continuous compliance therewith the Contractor must alter its performance under this Agreement, the Contractor shall not have the right to renegotiate the terms and conditions of this Agreement.

ARTICLE 2 - Standard Contract Provisions

- A. The parties agree that this Agreement shall be construed and interpreted in accordance with the laws governing the CSA. The Contractor shall be required to bring any legal proceeding against the CSA arising from this Agreement in the courts of the State on behalf of which the CSA acts. Any reference made to the laws, regulations, policies, procedures and/or executive orders of the State of New York shall be deemed to apply only to the contract entered into by the State of New York or for the CSA acting on its behalf.
- B. Should any provision of the Agreement be declared or found to be illegal, unenforceable, ineffective or void, then each party shall be relieved of any obligation arising from such provision; the balance of this Agreement, if capable of performance, shall remain in full force and effect.
- C. No term or provision of this Agreement shall be deemed waived and no breach consented to, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by a party to, or waiver of, a breach under this Agreement shall not constitute or consent to, a waiver of, or excuse for any other, different or subsequent breach.
- D. Notwithstanding the CSA's right to direct and supervise staff, it shall be understood that the Contractor is an independent contractor, and the Contractor, its agents, officers and employees, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees of the CSA.
- E. The CSA and the Contractor acknowledge and agree that time is of the essence in the Contractor's performance hereunder.
- F. The CSA shall not be liable for the payment of any taxes resulting from this agreement however designated, levied, or imposed, unless the CSA would otherwise be liable for the payment of such taxes under the course of its normal business operations.
- G. This Agreement, as defined in Article 1, Section A, and the Exhibits and Appendices attached hereto and incorporated by reference herein, constitute the entire agreement between the parties with respect to the subject matter. All other prior agreements, representations, statements, negotiations, and undertaking are superseded hereby. Unless otherwise provided, the terms, provisions, representations and warranties contained in this Agreement shall survive performance hereunder. It is understood that unless the context clearly indicates otherwise, all references herein to this Agreement shall be deemed to

include the Exhibits and Appendices attached hereto and incorporated.

ARTICLE 3 - Assurances

- A. The Contractor warrants that it has carefully reviewed the needs of the CSA as described in the RFP and its attachments and as otherwise communicated in writing by the CSA to the Contractor, and that it has familiarized itself with the RFP, the Contractor's proposal, and the other documents incorporated into the Agreement.
- B. The Contractor agrees that it will perform its obligations hereunder in accordance with all applicable laws, rules and regulations now or hereafter in effect.
- C. The Contractor warrants and affirms that the terms of this Agreement do not violate any contracts or agreements to which it is a party and that its other contractual obligations will not adversely influence its capabilities to perform under this Agreement.

Within fifteen (15) business days of the CSA's approval contemplated under Article 1, Section A of this Agreement, the Contractor will provide the CSA with and will maintain in force and effect for the benefit of the CSA an irrevocable Letter of Credit or performance bond, as set forth within the RFP, which may be fulfilled on an annually renewable basis ~~as specified in the RFP (Amended 1/4/13)~~, subject to the CSA's approval of the terms of said Letter of Credit and the institution providing said Letter or Credit on behalf of the Contractor, in the amount(s) listed below for the life of the seven (7) year term of this Agreement. Should the CSA exercise its option to extend the Agreement, the Contractor will maintain in force and effect for the benefit of the CSA, an irrevocable Letter of Credit subject to the CSA's approval of the terms of said Letter of Credit and the institution providing said Letter of Credit on behalf of the Contractor, in the amount(s) listed below for the remaining life of the Agreement. In the event of damages occurring as a result of non-performance, and/or in the event of breach of this Agreement resulting in liquidated damages, as per the terms identified elsewhere in this Agreement, the CSA may demand disbursement of all or any portion(s) of the face value of the Letter of Credit to recover said damages and/or liquidated damages. Such disbursements, pursuant to demand of all or any portion(s) of the face value of this Letter of Credit may be effected by the CSA's submission of written notice(s) to the institution that issued the Letter of Credit on behalf of the Contractor. Partial disbursement(s), pursuant to demand, shall not terminate the Letter of Credit, but the balance shall be diminished by any amounts disbursed and shall otherwise remain in effect. Said Letter of Credit will automatically expire at the end of this Agreement. In the event of breach of this Agreement resulting in liquidated damages, as per the terms identified elsewhere in this Agreement, the CSA may at its option recover said damages or liquidated damages by the deduction of such costs from monthly billing payments in amount sufficient to cover the liquidated damages or by assessment of the Letter of Credit

State	Letter of Credit or Performance Bond	Amount
New York	Letter of Credit	\$12,100,000

D. In consideration of the within premises, the Contractor represents to the CSA that:

1. The Contractor and/or any subcontractors have corporate authority to perform all duties required of it by this agreement.
2. The Contractor and/or any subcontractors are qualified to do business in the NCS states.
3. The Contractor shall give immediate notice to the NCS/CSA of any event or circumstance that may affect the validity of the representations contained herein and shall take any and all actions required to preserve its legal authority to perform this Agreement.

E. The Contractor warrants that:

1. The system to be used for delivery of core services, functionality, and associated technology as required and described in the EBT RFP must be comparable among all CSAs.
2. New functionality paid for by federal or state funds will be transferable between systems and between states, as applicable and as required by said systems and/or states, without additional charge for development for such transfer. However, additional costs may apply and be charged to the NCS states for testing, installation and other related work effort specific to such transfer in accordance with the change order pricing in Article 26.
3. New functionality will comply with the provisions and requirements of the Quest Operating Rules as adopted and amended by the Electronic Benefits and Services (EBS) Council and as approved by the NCS Regional Management Council, the CSA, the United States Department of Agriculture Food and Nutrition Services (FNS) and the United States Health and Human Services Administration for Children and Families.
4. OTDA reserves the right to terminate the award resulting from this procurement in the event it is found that the Procurement Lobbying Act Certification filed by the Contractor in accordance with State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, OTDA may exercise its termination rights by providing written notification to the awardee.
5. The Contractor shall comply with the applicable provisions of the State Information Security Breach and Notification Act (Article 39-F of the State General Business Law).

ARTICLE 4 - Obligations of the Parties to this Agreement

A. Contractor Obligations

1. The Contractor must develop, convert, implement, and operate the EBT system and services as outlined in the RFP, the Contractor's proposal, and this Agreement.
2. The Contractor assumes sole and complete responsibility for the cost and timely accomplishment of all of its activities and duties required by this Agreement and will carry out those activities and duties in a competent and timely manner.
3. The Contractor warrants that the services provided using the equipment and software identified in its proposal, or required follow-on products (software and hardware), along with support for said services and products, will be available for the term of this Agreement.
4. The Contractor agrees that no aspect of Contractor performance under this agreement will be contingent upon State personnel or the availability of State resources with the exception of:
 - a. Any actions of the Contractor specifically identified in this Agreement that require CSA acquisition, approval, policy decisions, or policy approvals. Such actions by the CSA will not be unreasonably delayed, and except as stated specifically herein, the Contractor shall not be liable for any damages for delays caused by the CSA or other Federal, State or local agencies.
 - b. The normal cooperation which can be expected in such a contractual relationship.
 - c. All actions required to be performed by the CSA in the authorization and approval of benefits as contemplated by this Agreement.
 - d. Exceptions stated in this Agreement.
 - e. Duties, tasks, and obligations subsequently agreed to by the parties.
5. The Contractor recognizes and agrees that any and all work performed outside the scope of this agreement or without the consent of CSA shall not be subject to charge by the Contractor.

6. The Contractor will cooperate fully with any other contractors who may be engaged by the CSA to carry out responsibilities associated with this Agreement.
7. The Contractor will provide authorized representatives of the State or Federal government, with appropriate notice by the CSA to the Contractor, access at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement. All such inspections shall be in conformity with the Contractor's reasonable security procedures.
8. The Contractor will cooperate as reasonably required with the NCS Regional Management Council including attendance at NCS RMC meetings.
9. The Contractor will provide all necessary travel expenses for two state personnel per CSA during system acceptance testing. Such travel must be compliant with the Contractor's travel policies and procedures.
10. The CSA reserves the right to request replacement of key staff, regardless of their employer (Contractor or subcontractor) during the contract period if their continued presence would be detrimental to the CSA or the success of the EBT project. All requests shall comply with applicable anti-discrimination and employment laws. CSA will submit such requests in writing stating its reasons for the request and will not be unreasonable in its request(s).

The Contractor will, within seven (7) calendar days of the request, either respond with detailed objections to the CSA's request or have said person(s) removed from the project and immediately replaced with a qualified employee acceptable to the CSA.

In the event that the Contractor objects and the CSA does not withdraw its request within seven (7) calendar days of receipt of the Contractor's objections, the dispute shall be resolved by the interpretation and dispute procedure described in Article 10.

11. The Contractor recognizes that the services provided under this Agreement are vital to the CSA and must continue without interruption, and that upon the expiration or termination of this Agreement as specified herein, a successor contractor other than the Contractor may be chosen to continue these services. Contractor agrees to continue performance of the services under the terms and conditions set forth herein during the pendency of any ongoing process of selecting a successor contractor. The Contractor must cooperate fully with the transition for the provision of EBT services by a different

contractor prior to current contract expiration and for one hundred and eighty (180) calendar days after the expiration of the contract. The provisions of this section shall survive the end of the term of this Agreement.

12. Contractor shall upon written notice provided by the CSA (1) furnish phase-in, phase-out services for a period to be determined by the CSA or NCS, and (2) negotiate in good faith the plan developed by the successor with the NCS/CSA and the successor to determine the nature and extent of the phase-in, phase-out services required. The plan must specify a set date for transferring responsibility for each division of work described in the plan, including, but not limited to, a detailed schedule of jobs that will be run for the conversion and the place during the schedule when balance and reconciliation activities will take place. The plan shall be subject to the prior written approval of the CSA. The Contractor must provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Agreement are maintained at the required level of performance. Such plan must include, but not be limited to, the following transition items:

- a. Retailers/Acquirers/TPPs and EBT-Only Merchants
Incumbent contractor will provide current lists of merchants, locations of EBT-only equipment, and supplemented phone lines.
- b. AMA/ASAP
Incumbent contractor will work with FNS, CSA and successor contractor to transfer authority to post to AMA and ASAP.
- c. Pseudo-retailer numbers
Upon CSA and FNS approval, incumbent contractor will provide pseudo-retailer numbers to the successor contractor.
- d. Database conversion, with provisions for check-point and back-out
Incumbent contractor will share file layouts and coordinate with the successor contractor to complete a database conversion to the successor contractor.
- e. Database clean-up
Incumbent contractor will work with FNS, CSA and the successor contractor to create a final version of the existing database suitable for conversion.
- f. ALERT
Incumbent contractor will coordinate with FNS, CSA and the successor contractor a switchover from the incumbent to the successor contractor input to the ALERT system.
- g. STARS

Incumbent contractor will coordinate with FNS, CSA and the successor contractor a switchover from the incumbent to the successor contractor input to the STARS system.

h. Administrative functionality access

Incumbent contractor will continue to provide administrative functionality access to the CSA for the duration of the conversion to a successor contractor.

i. Manual authorization “holds”

Incumbent contractor will coordinate with the CSA and the successor contractor the timing of a transition of handling manual vouchers and cooperate in coordinating the routing and clearing of manual vouchers during the transition.

j. Cards

Should cards be selected as a future option under the EBT contract, the incumbent contractor will coordinate the loading of the current card information to the successor contractor’s system as part of the database conversion.

k. PIN retention

Upon CSA approval, the incumbent contractor will share the PIN encryption algorithm so that existing PIN offsets can be loaded onto the successor contractor’s host.

l. Help Desk

Incumbent contractor will transfer the recipient help desk phone number to the successor contractor but retain the retailer help desk phone number.

m. Reconciliation

Incumbent contractor will coordinate with the CSA and the successor contractor reconciliation information and procedures to ease the transition from the incumbent contractor to the successor contractor.

n. Settlement

Incumbent contractor will coordinate with the CSA and the successor contractor to transfer settlement responsibilities from the incumbent to the successor contractor.

All conversion activities that are the responsibility of the Contractor must take place at times and using methods that will provide the least impact on retailers, recipients and state operations.

Any imbalances in the database values found after conversion and due to conversion that result in any liability must be the liability of the Contractor assuming responsibility for EBT host processing.

13. All phase-out costs associated with core services that are the responsibility of the Contractor must be included in the Cost Per Case Month. The Contractor will not be compensated for any additional phase-out costs.

14. The Contractor must provide immediate oral and written electronic notification to the CSA of any incidents, issues, or problems including, but not limited to, system outages, customer service delays, non-compliance with performance standards or deliverable due dates. Problem notification and resolution must provide immediate and open communication between the Contractor and the individual CSA personnel to allow for maximum CSA involvement in the planning, execution, and evaluation of any action(s) taken. Immediate oral and written notification must be followed up within a reasonable amount of time, but in no instance more than seven (5) calendar days from the initial oral and electronic written notification, with specific written information documenting the nature of the problem, the necessary actions/steps to resolve/correct the problem; estimated timeframes for implementation of the resolution; and the lead Contractor personnel to assure resolution of the problem.
15. The Contractor must submit adequate advance written notification to the CSA of any planned changes that may result in any potential operational disruption to the services provided under this agreement. Operational disruptions may include, but are not limited to, the EBT system (host processing, network, settlement, etc.) the EBT gateway, retailer management, cardholder and/or retailer customer service. The required notification must include a project plan that outlines the activities, timelines, and dependencies that ensure that the proposed changes will not jeopardize or impact the operations or services of the NCS or CSA. Such project plan must have approval by the CSA prior to implementation.

B. Contracting State Agency Obligations

1. The CSA shall ensure elements of the EBT system not provided by the Contractor are delivered in a timely manner and comply with the minimum standards as set forth in the EBT Quest Operating Rules.
2. The CSA warrants that adequate funds to meet non-federally reimbursed obligations will be available for daily settlement.
3. Any CSA that uses a separate card production system must ensure card production services are performed in a timely manner and comply with the minimum standards as set forth in the EBT Quest Operating Rules. If the Contractor incurs expenses as a result of defects in the card system or other systems that affect the delivery of EBT services by the Contractor, the Contractor is entitled to negotiate in good faith with the CSA for reimbursement of expenses incurred or expense to mitigate the problems.

ARTICLE 5 - Contract Interests, Assignments, and Subcontracts

- A. The CSA shall consider the prime contractor to be the sole contact with regard to all provisions of this Agreement. Full responsibility for the delivery of services provided by another firm which is a subcontractor or vendor to the Contractor under this Agreement must be assumed by the Contractor. Should the Contractor seek external financing, the CSA reserves the right to approve the assignment of the contract for financing purposes.
- B. It shall be understood that the Contractor is an independent contractor and the contractor, its agents, officers and employees, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees of the State or the CSA.
- C. Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person, corporation or other entity, other than the parties hereto and their successors in interest and assigns, any rights or remedies under or by reason of this Agreement.
- D. Prior written approval of the CSA is required for all subcontractors and for all subcontracts. Such approval shall not be unreasonably withheld. All subcontracts related to the performance of this Agreement shall be subject to the provisions of law set forth in individual specific state legislation as each CSA requires.
- E. All subcontracts must be in writing and must contain provisions which are functionally identical to, and consistent with, all of the provisions of this Agreement. Such functionally identical and consistent provisions shall include, but not be limited to, the following provisions of this Agreement: 1) Standard New York State Contract Clauses APPENDIX A (attached hereto as Appendix A); 2) Audit and Access provisions contained in Article 14 - Disclosure and Audit of Agreement Records; 3) Confidentiality provisions contained in Article 15 Confidentiality of Information; 4) Indemnification of OTDA in Article 11 Indemnification for Damages; 5) Termination of the Agreement in Article 16; and Performance Standards from Article 25. All subcontracts must contain a provision stating that the subcontractor agrees that the subcontract is subordinate to the Agreement with the CSA and that any and all conflicting provisions of the subcontract will be superseded by the terms of this Agreement.
- F. Prior written approval of the CSA is required for all Contractor- initiated changes in subcontractors and for all subcontracts, such approval shall not be unreasonably withheld. When proposing to add, to replace, or to assume the responsibilities of an existing subcontractor or vendor during the contract period, the Contractor must notify the NCS of its intent to add or replace a subcontract. Such notification must include justification for the change, provide the proposed subcontractor's qualifications

and experience, and provide transition work plans outlining the timeline, activities and dependencies that ensure that such action will not jeopardize or impact the operations or services of the NCS or CSA. Such transition work plans are subject to the review and approval of the CSA or NCS, as applicable. The CSA will review the plans and provide a reply to the Contractor within 15 business days. No Contractor costs or expenditures related to expenditures or obligations paid or owing to unapproved subcontracts may be asserted as damages or otherwise presented for payment in any proceeding or discussion involving the Contractor and the CSA.

- G. The Contractor will work with the CSA to define any potential operational disruption if the prime contractor elects to terminate or change their agreements with any subcontractor or vendor. Operational disruptions may include, but are not limited to: the EBT Gateway; retailer management, cardholder/retailer customer service; training; system operations; host processing; and/or network/settlement processing.
- H. The Contractor must modify any of the plans, as defined in the EBT RFP, if affected by a change in subcontractors or vendors. Revised plans are subject to the review and approval of the CSA or NCS, as applicable.
- I. The Contractor shall not be relieved in any way of any responsibility, duty, or obligation of this Agreement by any subcontract.

ARTICLE 6 - Payment Provisions

- A. Monthly invoicing will be submitted to the CSA in arrears by the Contractor on a Standard Voucher in a form acceptable to the CSA. The CSA will make best efforts to process all vouchers within 30 calendar days of their receipt; however, failure to make payment within said timeframes shall not be considered a breach of contract. Timeliness of payment and any interest to be paid to the Contractor for late payment shall be governed by the laws of the State.
- B. The CSA may only be billed for active cases that have benefit authorizations made available during the billing month. Monthly benefits transmitted prior to the availability date shall not constitute an active case until the benefit has been made available to the cardholder (e.g., availability date of the benefit has been reached).
- C. For invoicing purposes, an active case is defined as a case for which one or more benefit(s) has been authorized and transmitted to the EBT Contractor to be made available during the billing month. A single cardholder who has benefits authorized for both a cash program and SNAP is billable at the applicable cash cost per case-month and the applicable SNAP cost per case-month. Where optional services are chosen by the CSA and those services are priced on a cost per case month (CPCM) basis, the incremental CPCM will be added to the applicable cash CPCM and SNAP CPCM.
- D. The Contractor must provide monthly invoicing to the CSA in arrears on a standard voucher in a form acceptable to the CSA. The monthly invoicing must be accompanied by supporting documentation, provided electronically, broken into two parts. Part 1 and Part 2 billable case counts must reconcile. Part 1 must be manually input on the New York State standard voucher until such time that the monthly billing can be submitted electronically. Part 2 reporting must be provided to the CSA as part of month-end reporting and must be distributed through the regular reporting channels to the CSA for internal distribution.
- E. Part 1 of the documentation must provide detailed information in support of all billing charges for EBT services and for pass-through expenses. Data must be provided on unduplicated active case counts of cases in which benefits are made available during the billing month. Data must be broken down by benefit program (SNAP), cash and other programs as determined by the CSA). Cash benefits that are transferred to direct deposit accounts must not be included in the CPCM case counts.
- F. Part 2 of the documentation must include a distribution of monthly shares, statewide and by local district, that allocates the monthly billing charges across all benefit types and to federal, state and local shares. The sum of local district reports must equal the statewide summary for every component and within each report, statewide and local, columns and rows must foot

and cross-foot. This reporting must be provided to the CSA through regular reporting channels and must also be provided in a Microsoft Excel file format via an email attachment that allows for manipulation of the data.

G. Part 1 must also provide supporting documentation and a separate accounting of any benefits made available which occur in a month other than the month of the intended available date as supplied by the CSA.

H. Core Services

- a. Pricing for core services is volume based. Monthly billings to the CSA shall be based on the quoted Cost per Case-Month (CPCM) in the pricing tier that corresponds to the total actual number of cases per case category (SNAP and cash) across the NCS.
- b. Core services pricing for cash and SNAP benefits shall be in accordance with Appendix E.
- c. A single cardholder who has benefits made available by the CSA from both a cash program and SNAP will be billed at the applicable cash cost per case-month and the applicable SNAP CPCM.
- d. Surcharged transactions may not incur usage transaction fees (interchange and switch fees) that will be billable to the CSA or to the Cardholder.
- e. Unlimited ATM balance inquiries under the Quest network service mark will be provided by the Contractor at no additional cost to the CSA or the cardholder.
- f. From time to time the CSA will require the contractor to place emergency or benefit program ARU/SIVR broadcast messages. The contractor will be required to expedite this request within a reasonable amount of time, and at no additional cost to the CSA.

I. Optional Services

- a. Monthly bills must discretely delineate any optional services provided to the CSA.
- b. Optional services may be required by the CSA at any time during the contract period in conformance with the Change Management section 11.9 of the RFP. Such services may also be discontinued by the CSA with 90 days written notice at any time during the contract period, including any extensions. Implementation shall be in accordance with the requirements outlined in the RFP – Change Management, Section 11.9.
- c. Optional services pricing shall be in accordance with Appendix E.
- d. The CSA may elect to pay core optional start-up costs in advance or over time broken down into equal monthly payments of 84 months or by the number of months remaining in the contract duration, excluding option periods, at the

time that the CSA elects to implement the option. If the latter option is selected, the interest rate will be the five-year Treasury Bill rate in effect on the date that this Agreement is signed by the Contractor. If the option is selected subsequent to contract execution, the then-current Treasury Bill rate will be applicable.

- e. The Contractor will be reimbursed by the CSA for the interexchange rate for calls to the 1-800 Toll Free Customer Service number originating at public payphones during a single service month. The CSA will pay the Contractor, as a pass through in arrears on a monthly basis, the lower of 1) the Contractor's bid rate; or 2) the Federal Communications Commission (FCC) Default rate.

The Contractor must provide the CSA with information concerning payphone call volumes and other information available to the Contractor. Such information must be submitted monthly in support of the invoicing for payphone interexchange charges.

- f. The optional ATM/POB usage transaction fee free services may be required by the CSA at any time during the contract period in conformance with ATM Usage Transaction Fees, Section 4.2.3.4 of the RFP. Balance inquiry transactions, as well as transactions that are denied, reversed, voided or adjusted either partially or completely, do not count as one of the ATM usage transaction fee free ATM cash withdrawal transactions. Any ATM usage transaction fee accompanying reversed, voided or adjusted transactions must be credited back to the cardholder account. Once the cardholder has performed the allowed number of ATM usage transaction fee-free cash withdrawal transactions, the cardholder is responsible for any additional ATM usage fees associated with cash withdrawals as charged by the contractor. The number of free ATM usage transactions is based on a calendar month and is not affected by the status of the account, nor whether the benefits were posted/deposited to the account during the month.

- J. EBT processing for all core, core optional, and State specific services selected as of the date of commencement of this Agreement (as specified in Article 1.A.1.) under the terms and conditions of this Agreement must include transition and all required activities to provide a fully operational EBT system that meets the specifications included in this Agreement no later than July 31, 2014, in accordance with the obligations of the parties to this Agreement specified in Article 4 of this Agreement, unless an earlier date is mutually agreed upon by both the Contractor and the CSA.

- L. Letter of Credit. The Contractor shall supply an irrevocable letter of credit to the CSA at a price as specified in Appendix E payable monthly in arrears.

- M. All pricing is firm over the entire term of this Agreement including the two one-year extension options and therefore will not be subject to escalation.

N. Reimbursable postage charges shall be made by CSA monthly in arrears and subject to Contractor-provided documentation validating all such charges. Reimbursable charges shall be payable at cost and not subject to Contractor mark-up.

O. The Contractor must take advantage of all available postal bulk rate schedules, including as appropriate ZIP pre-sort, bar coding, ZIP plus 4, and any other relevant postal price offerings. The CSA will make monthly payments based on the number of pieces mailed during the month at the ZIP pre-sort rate in effect at the time of mailing. Daily reports from the contractor must detail the postage rate based on ZIP pre-sort requirements (residual mail as defined by the Post Office will be paid for as first class mail). Copies of the postage receipts from the Post Office for each mailing must accompany each month's billing for postage.

P. The CSA shall not be liable for the payment of any taxes under this Agreement however designated, levied or imposed. The CSA represents that the Contractor is not liable for the payment of any transfer taxes including, but not limited to, sales taxes upon goods or services purchased for or provided for the CSA.

Q. Change and Release Management. The CSA may authorize the Contractor to perform changes as described in the RFP, Section 11.9.6. For personal services, payments to the Contractor shall be based on the change request rates included in Appendix E. Any applicable non-personal services charges shall be billed at cost as evidenced by invoicing or other such reasonable documentation to be submitted by the Contractor plus a mark-up/administrative fee of not more than 5% as specified in Appendix E. The mark-up/administrative fee shall not apply to personal service charges.

R. From time to time, the CSA may also require the Contractor to perform pilot projects or other EBT-related tasks which, although within the general scope of work required by this Agreement, are not required to be performed within the current pricing structure. For personal services, payments to the Contractor shall be based on the change request rates specified in Appendix E. Any applicable non-personal services charges shall be billed at cost as evidenced by invoicing or other such reasonable documentation to be submitted by the Contractor plus a mark-up/administrative fee of not more than 5% as specified in Appendix E. The mark-up/administrative fee shall not apply to personal service charges. Prior written approval from the CSA shall be required for all such tasks and total expenditures within any given contract year and will not exceed \$250,000. Prior to providing written approval, the CSA reserves the right to require reasonable evidence, including the requirement that the Contractor follow formal bidding procedures, that all tasks performed hereunder are obtained from the best available source, price and all other factors considered.

S. In the event that inadequate funds are available to meet County reimbursed obligations for daily settlement, the Contractor will provide funding on a temporary basis at an interest rate equal to the then-current prime rate plus a percentage as specified in

Appendix E in accordance with the provisions of the Emergency Reimbursement Plan in the New York State Appendix to the EBT RFP.

T. The Contractor shall be liable for interest payable to the CSA at a rate equal to the then-current prime rate plus a percentage as specified in Appendix E for errors made by the Contractor regarding transfers as described in the Contractor's response to Section 6 Settlement and Reconciliation Procedures of the RFP (e.g. Contractor removes funds from county funding accounts twice for the same transaction).

U. 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 email at epunit@osc.state.ny.us or by telephone at 518-474-4032. Contractor acknowledges that it will not receive payment on any invoices submitted under this Agreement if it does not comply with the State Comptroller's electronic payment procedures, except where the OTDA has expressly authorized payment by paper check as set forth herein. The Contractor acknowledges that payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the OTDA, in the OTDA's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices as established by the State Comptroller.

V. The Contractor shall also comply with the State Comptroller's requirement to file a Substitute Form W-9. The form and the instructions for completing the W-9 can be found at OSC's website: <http://www.osc.state.ny.us/epay>.

W. Price Protection - The prices and warranties granted by the Contractor herein are comparable to or better than the equivalent terms being offered by the Contractor to other State government customers using similar scope and volume of services under like terms and conditions. If the Contractor, during the term of this Agreement, enters into agreements with any other government customers providing better prices and warranties inconsistent with the commitments of this section, at the option of the Office of Temporary and Disability Assistance (OTDA), this Agreement shall thereupon be deemed amended to provide the same to the OTDA.

ARTICLE 7 - New York State Public Officers' Law

- A. The Contractor agrees not to engage in any conduct which the Contractor knows or has reason to believe would violate or would assist an employee of the State to violate Sections 73 and 74 of New York's Public Officers Law.

ARTICLE 8 - Rights of the State

A. License/Ownership/Title of Products Furnished

1. The Federal government retains the rights to use and authorize others to use, any software products developed with Federal funding. This is a non-exclusive, royalty free right to these products, and does not include ownership or copyrights to the material. The CSA(s) may copyright such material if they so choose; however, any Federal rights to use the material would not be affected by the State copyright.
2. Contractor warrants that it has full ownership, clear title or perpetual license rights to any and all tangible or intangible products furnished, used or modified by the Contractor or third parties on behalf of the State pursuant to contract award, and Contractor shall be solely liable for the full cost of acquisition associated therewith. Contractor shall provide the State with appropriate documentation indicating the vesting of such rights in Contractor, and/or the right to transfer or transfer of such rights, as requested by State. The cost of obtaining such rights for continued perpetual use of such product(s) by the CSA upon project completion shall be deemed to have been included by Contractor in its proposal. Such products include, without limitation, all hardware, commodities, custom programming or third party software, training modules, printed materials, source codes, or any other products or services furnished pursuant to a contract award. The Contractor fully indemnifies the CSA for any loss, damages or actions arising from a breach of said warranty in accordance with Article 11 herein.

B. Title of Proprietary Information Furnished for Evaluation Purposes

1. Any and all proprietary written documentation, information, object or source code and software provided to the CSA for use in conjunction with a Contract award evaluation including any pre-award benchmark testing, shall remain the property of Contractor.
2. Contractor hereby grants the CSA a personal, non-transferable and non-exclusive license for the duration of the contract to use all such documentation, technical information, confidential business information and all software and related documentation, in whatever form recorded (all hereinafter designated “property”), which are furnished to the State.

C. Ownership/Title to Custom Products/Programming Deliverables

1. It is anticipated that Deliverables under this contract may include “existing” and/or “custom” materials.

2. "Existing Materials" include, without limitation, such things as: programs, program listings, programming tools, documentation, reports, drawings, data, modules, components, utilities, interfaces, templates, subroutines, algorithms, formulas and technical information, existing prior to the contract award, and/or independently developed by Contractor or another Third Party other than as a result of an Order Letter, including components transferred under perpetual license pursuant to this Article, above (hereinafter "Existing Materials(s)").
 3. "Custom Materials" include, without limitation, such things as programs or programming tools, source code, object code, user or training manuals, programming, reports, drawings and any other materials, preliminary, final and otherwise, created, prepared, written or developed, whether jointly or individually, for the CSA under an Order letter (hereinafter "Custom Material(s)").
 4. Title to all Existing Material(s), whether or not embedded in or operating in conjunction with Custom Materials, shall remain with Contractor or such Third Party, who shall have all right, title and interest (including ownership or copyrights). Contractor will deliver as directed Existing Material(s) to the CSA and hereby grants an irrevocable, non-exclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute Existing Materials to Authorized Users. The CSA agrees to reproduce the copyright notice and any other legend of ownership on any copies made under the licenses granted under this paragraph.
 5. Title to Custom Material(s), excluding Existing Materials, shall be the sole and exclusive property of the CSA, who shall have all right, title and interest, including ownership and copyrights, and the rights to use, copy, modify and prepare derivative works of the Custom Materials. The CSA retains the right to sell Custom Materials, or to license them on an exclusive or non-exclusive basis. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Materials are protected against unauthorized copying, reproduction and marketing by or through the Contractor.
 6. Nothing herein shall preclude the Contractor from using the related or underlying general knowledge, skills and experience developed in the course of providing the Project Deliverables and intellectual property in the course of Contractor's business.
- D. Nothing in this Agreement shall preclude Contractor from developing for itself, or for others, materials that are competitive with those produced or a result of the services provided hereunder, irrespective of their similarity to items which may be delivered to CSA pursuant to this Agreement.

ARTICLE 9 - Document Incorporation and Order of Precedence

1. This Agreement consists of:
 1. The body of this Agreement (i.e., that portion preceding the signatures of the parties in execution);
 2. The Exhibits attached to this Agreement body; and
 3. The appendices attached to or incorporated by reference in this Agreement body.
2. In the event of any inconsistency in or conflict among the document elements of this Agreement identified in this Article, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the following order:
 1. First, Appendix A;
 2. Second, body of this Agreement;
 3. Third, the RFP (incorporated as Appendix C); and
 4. Fourth, the Contractor's Proposal, including clarification correspondence (incorporated as Appendix D);
 5. Fifth, Appendices other than Appendices A, C and D.
3. This Agreement as defined in this Article constitutes the entire agreement between the parties with respect to the subject matter. All prior agreements, representations, statements, negotiations and undertakings are superseded hereby. The terms, provisions, representations and warranties contained in this Agreement shall survive performance hereunder.

ARTICLE 10 - Interpretations and Disputes

- A. This disputes provision shall apply to any dispute of the parties relating to performance under the Agreement except liquidated damages. Any dispute concerning any question of fact or law arising under the Agreement, which is not disposed of, by mutual agreement of the parties shall be initially decided by the adjudicator designee (hereinafter “Designee”) of the Director the Bureau of Contract Management (hereinafter “Director”). The Director shall also designate the person who will present OTDA’s position in the dispute (hereinafter “Advocate”).
- B. Within thirty days of such designations, the Advocate will state and brief the Designee on OTDA’s position on the dispute. The Contractor will then have thirty days to make its submission; the submission may include any material the Contractor deems relevant to the dispute. All documents may be sent either by surface mail, by carrier, or electronically.
- C. The Advocate will have a right to submit a response to the Contractor’s submission. The response must be limited to the material rebutting evidence and arguments raised by the Contractor in its most recent submission and must be submitted within fifteen days of receipt of the Contractor’s submission. If the Advocate submits a response, the Contractor will have thirty days to prepare and submit a response to the Advocate’s rebuttal submission; this response shall consists wholly of material which responds to evidence or arguments raised in the Advocate’s rebuttal. Any actual submission by the Advocate shall generate a right of rebuttal by the Contractor.
- D. The Advocate and the Contractor will be informed in writing by the Designee when the submission process is deemed complete. The Designee shall have the right to take administrative notice of relevant matters of law and fact as he believes appropriate, in accordance with general principles of Administrative Law.
- E. The Designee will prepare and forward the recommended written decision to the Director. The Director shall: (a) evaluate the Designee’s findings and recommendations, (b) review the materials presented by the Contractor and the Advocate, (c) if necessary, consult with agency Counsel, and (d) prepare a response to the dispute either ratifying, modifying, or reversing the recommended decision. The Director’s decision will be rendered within 45 days of the date when the submission process is deemed complete pursuant to 10.D, above.
- F. A copy of the Director’s decision stating the reason(s) upon which it is based and informing the Contractor of the right to appeal an unfavorable decision to the General Counsel of OTDA, will be issued to both parties. The dispute decision shall be deemed a final and conclusive agency decision unless a written notice of appeal is received no more than 15 calendar days

after the date the decision is received by the Contractor. Such notice of appeal must be filed with the General Counsel of OTDA.

- G. The General Counsel of OTDA or his designee(s) shall hear and make a final decision on all appeals. A formal dispute appeal may not introduce new facts unless responding to facts or issues unknown to the Contractor prior to the final dispute decision. The General Counsel's decision will be rendered within 30 calendar days of the date that the notice of appeal is received by the General Counsel.
- H. If the Contractor is unwilling to accept the decision rendered through this procedure or if a decision is not made within 90 calendar days after the record is deemed final, it may then pursue its normal legal remedies de novo, but it is specifically agreed that any and all reports rendered through this procedure shall be admissible as evidence in any court action taken with respect to the matter. Pending conclusion of any dispute or disagreement by whatever procedure, the construction placed upon the Agreement by the State shall govern operation there-under and the Contractor and the OTDA shall continue to perform under the Agreement.
- I. The Director and General Counsel shall have the power to change any or all of their designees or otherwise alter the rules of proceeding upon written notice to the Contractor.
- J. The Contractor shall be required to bring all legal proceedings relating to this Agreement against the OTDA or the State of New York in the Supreme Court of the State of New York in the County of Albany or the New York State Court of Claims.

ARTICLE 11 - Indemnification for Damages

- A. In performance of its duties pursuant to this Agreement, Contractor shall fully indemnify and save harmless the CSA from suits, actions, damages and costs of every name and description relating to personal injury, damage to real or personal tangible or intangible property, or any other claim for direct damages arising as a result of negligent acts or omissions or willful misconduct of Contractor, its officers, employees, subcontractors, partners or agents.
- B. The CSA may, in addition to other remedies available to them at law, retain such monies from amounts due Contractor, or may proceed against any performance and payment bond under the Contract award Definition/Specifications, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them; provided, however, that the Contractor shall not indemnify to the extent that any claim, loss or damage arising hereunder is caused by the negligent act or failure to act of the CSA.
- C. As a condition to the foregoing indemnity obligations under this Article the State shall provide Contractors with prompt notice of any claims for which indemnification may be sought hereunder, shall reasonably co-operate with Contractor in connection with any such claim and, shall be responsible for its compliance with any laws and regulations associated with any deliverables supplied by Contractor hereunder.

ARTICLE 12 - Force Majeure

- A. Neither party shall be liable or deemed to be in default for any delay or failure in performance under this Agreement resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, wars, riots, civil disturbances, insurrections, accidents, fire, explosions, earthquakes, flood, the elements, acts or omissions of public utilities, or any other causes not reasonably foreseeable or beyond the control of a party. The parties are required to use best efforts to eliminate or minimize the effect of such events during performance of this Agreement.

ARTICLE 13 - Record Retention

- A. The Contractor during the course of this Agreement and for a period of six (6) years following its termination, or final payment hereunder, whichever occurs later, agrees to maintain and make available for audit by duly authorized representatives of the CSA, the individual states, and the United States Government all financial records or documentation arising hereunder or relating hereto.
- B. Records involving matters in litigation or audit must be kept for a period of not less than three (3) years following the termination of the litigation or audit. Microfilm copies of any Agreement-related documents may be substituted for the originals with the prior written approval of the CSA, provided that the microfilming procedures are accepted by the CSA as reliable and are supported by an adequate retrieval system.
- C. The Contractor shall be responsible for assuring that the provisions of this Article shall apply to any subcontract related to performance under this Agreement.

ARTICLE 14 - Disclosure and Audit of Agreement Records

- A. The responsible NCS State agencies, United States Department of Agriculture, Food and Nutrition Service (USDA-FNS), or any other governmental agency authorized by law, reserve the right to inspect, review, investigate or audit all parts of any services provided herein by the Contractor's or any subcontractors' or vendors' facilities engaged by the prime contractor in performing EBT services. In such capacity, the NCS States, or their representative(s), must have access to facilities, records, reports, personnel and other appropriate aspects of the EBT system furnished by the contractor, in accordance with the requirements of the New York State Public Officers Law, Section 87, Article 6, except for proprietary information for which the disclosure of which would cause substantial injury to the competitive position of the Contractor's enterprise.
- B. All records and information obtained by the CSA pursuant to the provisions of this Agreement, whether by audit or otherwise, shall be usable by the State solely for the purpose of performing this Agreement in any manner, at its sole discretion, as it deems appropriate and the Contractor shall have no right of confidentiality or proprietary interest in such use of such records or information.
- C. Contractor hereby agrees that all documents furnished by Contractor shall be subject to public disclosure by the CSA in the normal course of business in accordance with the requirements of the Public Officers Law, Article 6, except for proprietary information the disclosure of which would cause substantial injury to the competitive position of Contractor enterprise. Information relating to Contractor price submissions, including commercial, book or list pricing, applicable discounts or final bid price and like information, shall not be entitled to confidentiality protection whether or not submitted or designated as proprietary to Contractor. Contractor may otherwise preserve proprietary rights as to confidential or business process information in accordance with procedures established under applicable State laws, including Section 89, New York Public Officers Law, provided that (i) Contractor shall inform State prior to or with submission of its bid, in writing, that such records are being furnished, are proprietary and are not to be disclosed; and (ii) said records shall be sufficiently identified; and (iii) Contractor shall state the reasons with specificity why the information should be exempted from disclosure; and (iv) designation of said records as exempt from disclosure is reasonable and accepted by CSA.
- D. The Contractor shall promptly notify the CSA of any request by anyone for access to any records maintained pursuant to this Agreement. Access by Federal or State bank regulatory agents, or Contractor's regular outside auditors to Contractor's financial records, pursuant to regularly scheduled or routine audits or inspection of Contractor, shall not require notification to the CSA provided that rights of confidentiality or proprietary interests are preserved.

E. The Contractor shall be responsible for assuring that the provisions in this Section shall apply to any subcontract related to performance under this Agreement.

ARTICLE 15 - Confidentiality of Information

- A. The Contractor, its officers, agents and employees and subcontractors, shall treat all information, with particular emphasis on information relating to Public Assistance or Medical Assistance clients and providers of services or benefits, which is obtained by it through its performance under this Agreement, as confidential information to the extent required by the laws of the CSA and of the United States and any regulations promulgated thereunder.
- B. Individually identifiable information relating to any eligible client or provider shall be held confidential and shall not be disclosed by the Contractor, its officers, agents and employees or subcontractors, without the prior written approval of the CSA.
- C. All other information about or from the CSA's operations, policies, and procedures not covered by sections A or B of this Article, must be kept confidential as if it were so covered. The use of any information obtained by the contractor in the performance of its duties under this Agreement shall be limited to purposes directly connected with such duties.
- D. The Contractor shall promptly advise the CSA of all requests made to Contractor for information related to the contract.
- E. The Contractor shall be responsible for assuring that any agreement between the Contractor and any of its officers, agents and employees or subcontractors contains a provision that conforms to the provisions of this Article.
- F. The Contractor will use the same care and discretion to avoid disclosure, publication or dissemination of confidential information as it uses with its own similar information that it does not wish to disclose, publish or disseminate.
- G. The obligation(s) and limitation(s) set forth herein regarding the confidential information shall not apply to information which is:
 - 1. At any time in the public domain other than by a breach of this Agreement on the part of the receiving party.
 - 2. At any time rightfully received from a third party which has the right and transmits it to the receiving party without any obligation of confidentiality.
 - 3. Rightfully known to the receiving party without any limitation on use or disclosure prior to receipt of the same from the furnishing party.

4. Independently developed by personnel of the receiving party who have no access to confidential information received from the furnishing party.
 5. Generally made available to third parties by the furnishing party without any restriction concerning use or disclosure.
 6. Required to be disclosed by law or judicial process.
- H. Except for personal information relating to clients and providers which shall be kept confidential pursuant to requirements of the CSA and federal laws, and information relating to the business and finances of the State or the Contractor, confidential information disclosed by one party to the other continues to be subject to this Agreement for six years following termination of this Agreement. No obligation of confidentiality applies to:
1. Information the Contractor already possesses without an obligation of confidentiality.
 2. Information the Contractor develops independently from publicly available data.
 3. Information the Contractor receives without obligation of confidentiality from a third party.
 4. Information that is, or becomes, publicly available without breach of this Agreement.
- I. In the event either party receives a subpoena or other validly issued administrative or judicial process requesting confidential information of the other party, it shall, to the extent permitted by law, provide prompt notice to the other of such receipt prior to disclosure or action. The party receiving the request shall thereafter be entitled to comply with such subpoena or other process to the extent permitted or required by law.
- J. Non-Disclosure/Freedom of Information
1. While this Agreement is in effect and thereafter, the CSA will, to the extent allowable by law, protect and keep confidential the contents of the proprietary information, software and documentation which are marked confidential or proprietary to the Contractor. The CSA shall employ the same or similar precautions used for its own confidential information. The CSA will keep in confidence and protect Proprietary information from disclosure to third parties and restrict its use as provided in this Agreement. All materials containing proprietary information will be marked with "Proprietary,"

"Confidential," or in a manner which gives notice of its proprietary or confidential nature. Proprietary information will not be copied, in whole or in part, except when essential for correcting, generating or modifying Proprietary information for the CSA's authorized use.

2. Both the CSA and Contractor recognize that information provided by Contractor to the CSA may be subject to public disclosure under the New York State Freedom of Information Law (New York Public Officers Law, Article 6, Section 84 et. seq., hereinafter referred to as "FOIL"). With respect to information which is identified as trade secret, proprietary or which might compromise the competitive position of a vendor which may be exempt from disclosure under FOIL, the CSA shall make a good faith determination of FOIL's applicability to the information provided by Contractor and if the CSA is compelled to provide such information, the CSA shall provide Contractor with notice of its intent to disclose such information. Unless circumstances beyond the control of the CSA require an earlier time of disclosure, the Department shall make reasonable efforts to provide Contractor with ten (10) working days' notice in accordance with the Notification provisions (Article 19) of this Agreement. Contractor, in its discretion, may avail itself to any and all remedies at law and equity to prevent such disclosure.

K. Rights to Information

1. Except as otherwise provided herein, the ideas, concepts, know-how or techniques developed during the course of this Agreement by Contractor personnel or jointly by Contractor and CSA can be used by either party in any way it may deem appropriate.
2. Each invention, discovery, or improvement and specifically, new software programs and associated documentation as well as modification, improvements and enhancements to existing software which includes ideas, concepts, know-how or techniques developed in the course of this Agreement shall be treated in accordance with the following general principles:
 - a. If a modification, improvement or enhancement to software generally licensed by Contractor to end-users, then such modifications, improvements, and enhancements shall be the property of Contractor and Contractor hereby grants to the CSA a non-transferable (except to sibling state agencies to the CSA), non-exclusive, irrevocable and royalty-free license to use with a Contractor software processing unit.
 - b. If a modification, improvement, or enhancement to application software which has not been licensed to the CSA by Contractor and is used by Contractor in its provision of services, then such modifications, improvements and enhancements shall be the property of the Contractor.

- c. If a modification, improvement or enhancement to application software which is owned by the CSA and has been licensed to the Contractor, then such modifications, improvements, and enhancements shall be jointly owned, without right of accounting.
 - d. If a modification, improvement or enhancement to application software developed exclusively by the Contractor for use by the CSA, then such modifications, improvements, and enhancements shall be jointly owned without right of accounting. In all other cases, such modification, improvements and enhancements shall remain the sole property of the Contractor.
 - e. If a new application software program for the CSA with development costs partially funded by the Contractor, then such application software program shall be jointly owned, without right of accounting.
 - f. If a derivative of existing applications software, that is the property of Contractor with development costs funded in whole or in part by the CSA, then such derivative application software shall be jointly owned, without right of accounting.
 - g. If a new application program for the CSA which has been entirely funded by the CSA, then such new application software shall be the property of the CSA.
 - h. If a new application software program for the CSA with development costs partially funded by Contractor or derived from the existing application software which is the property of the Contractor, then such applications software program shall be jointly owned, without right of accounting.
3. Notwithstanding the provisions set forth above, the parties agree that the United States Department of Health and Human Services and the United States Department of Agriculture shall be granted a royalty-free, non-exclusive and irrevocable license to produce, publish or otherwise use such documents and software and to authorize others to do so for government purposes to the extent that the services which resulted in the production of such documents and software are Federally funded. The grant excludes the proprietary products, documentation, materials and information (and derivative works thereto) of Contractor, Contractor's sub-contractors and third party product providers.
4. The CSA acknowledges that the provision of Contractor services under this Agreement does not create a license by the CSA to use any software generally licensed by the Contractor to end-users and if any such software is to be used in

connection with the provision of Services hereunder, a separate license is necessary. Ownership of software modifications, improvements, and enhancements does not create any interest in or right to use underlying software, absent ownership of the underlying software or an express conveyance of rights or grant license from the party owning the underlying software.

5. The above provisions shall not preclude the Contractor from developing materials, including software, which are similar to that furnished the CSA in the course of providing services under this Agreement.
6. This Article will survive termination or cancellation of this Agreement.

ARTICLE 16 - Termination of the Agreement

- A. All or any part of this Agreement may be terminated by mutual written agreement of the contracting parties.
- B. Unless otherwise excused, all or any part of this Agreement may be terminated by the CSA in the event of failure of the Contractor to perform within the time requirements set forth in this Agreement.
- C. All or any part of this Agreement may be terminated by the CSA for cause upon the failure of the contractor to comply with the terms and conditions of this Agreement, including the attachments hereto. In the event that the Contractor is in breach of its obligations under this Agreement other than case of willful violation, the CSA shall give the Contractor written notice specifying Contractor's failure. Termination shall be immediately effective upon receipt of such notice. The Contractor agrees to incur no new obligations nor to claim any expenses made after receipt of notification of termination. Termination for cause shall create a liability upon the Contractor for legal damages.
- D. All or any part of this Agreement may be terminated if the CSA deems that termination would be in the best interest of the CSA provided that the CSA shall give written notice to the Contractor not less than 90 calendar 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 with receipt made. The date of such notice shall be deemed to be the date of postmark in the case of mail or the date of Contractor's receipt for notice in the case of hand delivery. In the case of termination under this section, the CSA agrees to pay the Contractor for contract work performed and reasonable and appropriate expenses incurred in good faith. The CSA will not be obligated to pay the Contractor for lost and/or anticipated profits. The Contractor, on its part, agrees to incur no new obligations after receipt of notification of termination and to cancel as many outstanding obligations as possible
- E. This Agreement may be deemed terminated immediately at the option of the CSA upon the filing of a petition in bankruptcy or insolvency, by or against the Contractor. Such termination shall be immediate and complete, without termination costs or further obligations by the CSA to the Contractor.
- F. Should the State determine that Federal or State funds are unavailable, the CSA may terminate all or any part of the Agreement immediately upon notice to the Contractor. Such notification will be in written format. The CSA will be obligated to pay the Contractor only for the expenditures made and obligations incurred by the Contractor until such time as the Contractor receives notice of termination in writing from the CSA.

- G. In the event of termination for any reason, the Contractor shall not incur new obligations for the terminated portion and the Contractor shall cancel as many outstanding obligations as possible. Contractor shall take all reasonable measures to mitigate any damages for which the CSA may be liable.
- H. If this Agreement is terminated for any reason, the CSA shall have the right to award a new contract to a third party. In the event of termination for cause, the CSA shall have the right to seek recovery of damages incurred by the CSA and the reasonable costs incurred in reassigning the contract, subject to the limitations set forth in Article 16 of this agreement.
- I. If all or any part of this Agreement is terminated as a result of the Contractor's failure to perform as provided for in this Agreement, the CSA shall have the right to possession and use of any purchased or leased equipment, software or rights and to the services of any personnel pursuant to the terms of this Agreement, provided that payments are made to Contractor, its successors or assigns, in the amounts and manner provided for by the terms of this Agreement or in a reasonably comparable amount or manner if the terms of this Agreement do not specify the amounts and manner in which payments shall be made in the circumstances existing at the time of termination. Contractor or its successors or assigns shall not repossess or authorize the repossession on any equipment, software or rights and shall not discontinue, or authorize the discontinuance of, any services of any personnel without having first obtained a court order to such effect after having given the CSA notice and an opportunity to appear and respond in an appropriate legal forum.
- J. The remedy set forth in this Article shall be in addition to any other remedy available to the State under this contract or under any other provisions of law.
- K. The OTDA reserves the right to terminate this Agreement in the event it is found that the certification filed by the Contractor in accordance with the State Procurement Lobbying Act was intentionally false or intentionally incomplete. Upon such finding, the OTDA may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the Agreement.
- L. Should the OTDA determine that the Contractor/Subcontractor has become non-responsible, or, in the event it is found that the Contractor/Subcontractor Background Questionnaire as submitted was intentionally false or incomplete, the OTDA shall advise Contractor or Contractor and Subcontractor of such finding and Contractor/Subcontractor shall have 30 calendar days to provide evidence that the Contractor/Subcontractor is responsible or correct/resolve such issues. If, after the 30 calendar day time period, at the OTDA's sole discretion, the OTDA determines that the Contractor/Subcontractor is not responsible, the OTDA may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the Agreement. In the event of assignment where the proposed Contractor/Subcontractor does not meet

OTDA's responsibility review, OTDA may, after meeting with the Contractor and proposed Contractor/Subcontractor as described above, exercise its termination rights as specified in the Agreement.

ARTICLE 17 - Patent/Copyright Indemnification

- A. The Contractor, at its expense, will defend any claim or suit which may be brought against the CSA for the infringement of United States patents or copyrights arising from the Contractor's or CSA's use of any equipment, materials, or information prepared or developed by the Contractor in connection with performance of this Agreement and in any suit will satisfy any final judgment for such infringement. The CSA will give the Contractor written notice of such claim or suit and full right and opportunity to conduct the defense thereof, together with full information and all reasonable cooperation.
- B. If principles of governmental or public law are involved, the CSA may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of Contractor without Contractor's written consent.
- C. If in the Contractor's opinion the equipment, materials, or information mentioned above are likely to be or become the subject of a claim of infringement of a Contractor's obligation to satisfy any final award, Contractor may, with the CSA's written consent, substitute other equally suitable equipment, materials, and information or at Contractor's option and expense, obtain the right for the CSA to continue the use of such equipment, materials, and information. In the event that an action at law or in equity is commenced against the CSA arising out of a claim that the CSA's use of the software, equipment, materials or information under this Agreement infringes on any patent, copyright, or proprietary right, and such action is forwarded by the CSA to the Contractor for defense and indemnification pursuant to this paragraph, the CSA shall copy all pleadings and documents forwarded to the Contractor together with the forwarding correspondence to the Office of the Attorney General of the State of New York together with a copy of this Agreement. If upon receipt of such request for defense, or at any time thereafter, the Contractor is of the opinion that the allegations in such action, in whole or in part, are not covered by the indemnification set forth herein, the Contractor shall immediately notify the CSA and the Office of the Attorney General of the State of New York in writing and shall specify to what extent the Contractor believes they are and are not obligated to defend and indemnify under the terms and conditions of this Agreement. The Contractor shall in such event protect the interests of the State of New York and secure a continuance to permit the State of New York to appear and defend its interests in cooperation with the Contractor as is appropriate including any jurisdictional defenses which the State shall have.
- D. The Contractor shall have no liability to the CSA, hereunder or otherwise, with respect to any claims of patent or copyright infringement which are based on the use of any unit of equipment or combination of equipment or programs not supplied by the Contractor, nor shall the Contractor have any liability with respect to any claims or patent or copyright infringement based on use of any unit of equipment in a manner other than in accordance with its specifications as provided by the Contractor and the license given to the CSA herein.

ARTICLE 18 - Lobbying Certification

- A. Section 1352 of Title 31 of the U.S. Code requires that funds appropriated to a Federal agency be subject to a requirement that any Federal Contractor or grantee (such as the State) must be required to certify that no Federal funds will be used to lobby or influence a Federal officer or a Member of Congress. The certification the State has been required to sign for the Federal Department of Health and Human Services (HHS) provides that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-clients shall certify and disclose accordingly. The certification also requires the completion of Federal lobbying reports and the imposition of a civil penalty of \$10,000 to \$100,000 for failing to make a required report. As a sub-client, the Contractor understands and agrees to the Federal requirements for certification and disclosure.

ARTICLE 19 - Notification

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

1. via certified or registered United States mail, return receipt requested;
2. by facsimile transmission;
3. by personal delivery;
4. by expedited delivery service; or
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:

CSA Contact

TBD

E-Mail Address:

Contractor Contact

TBD

Telephone Number:

E-Mail Address:

- B. 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.
- C. 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 20 - Conflict of Interest

- A. If during the term of this Agreement and any extension thereof the Contractor becomes aware of an actual or potential relationship which may be considered a conflict of interest or has reason to believe such relationship exists, the Contractor shall notify the CSA in writing immediately. Should the Contractor engage any current or former CSA employee as its own employee or as an independent contractor because of such employee's knowledge of State finances, operations or knowledge of the State's programs, or any current or former State employee who in the course of his State employment had frequent contact with Management level Contractor employees, the Contractor shall notify the CSA, in writing, immediately. Should the CSA thereafter determine that such employment is inconsistent with State or Federal Law, the CSA shall so advise the Contractor, in writing, specifying its basis for so determining, and may require that the contractual or employment relationship be terminated.

ARTICLE 21 - Other Agency Use

- A. Upon request by any other New York State Agency, the Contractor shall enter into an agreement with such agency for the purchase of the goods and services that are the subject of this Agreement which is the subject of the EBT RFP. Such new agreement shall provide that the cost of such goods and services to the agency entering into such agreement shall be the same as charged to CSA under this Agreement except that the Contractor shall be permitted to negotiate an increase in price to the extent it can show an increase in the cost of providing goods and services which can be attributed to the fact that the agency requires the contractor to be obligated to standard contractual provisions that are more onerous than those contained in Standard New York State Appendix A .

- B. Upon request by a local social services district or its designated purchasing agent, the contractor shall enter into an agreement with such district or agent for the purchase of the goods and services that are the subject of this Agreement. Such new agreement shall provide that the cost of such goods and services to the district/agent entering into such agreement shall be the same as charged to CSA under this Agreement except that the contractor shall be permitted to negotiate an increase in price to the extent it can show an increase in the cost of providing goods and services which can be attributed to the fact that the municipality constituting the social services district requires the contractor to be obligated to standard contractual provisions are more onerous than those contained in Standard New York State Appendix A.

ARTICLE 22 - Limitation of Liability

- A. For damages arising as a result of acts or omissions of Contractor, its officers, employees, subcontractors, partners or agents, Contractor shall be jointly and severally responsible for the actions of its agents, employees, partners, or sub-contractors, including losses arising from, but not limited to: (i) providing defective or inadequate specifications; (ii) defective or inadequate performance; (iii) losses incurred in shipping and delivery of products to site; (iv) connection, installation or removal of tangibles or intangibles, including telecommunications; (v) defective or inadequate recommendations inducing detrimental reliance by Issuing Entity; (vi) defective or inadequate maintenance and warranty service; or (vii) removal of existing equipment or acquisition of components resulting from defective specifications. The Contractor remains liable, without monetary limitation, for direct damages for personal injury, death, or damage to real property or tangible personal property attributable to the negligence or other tort of the Contractor, its officers, employees or agents.
- B. The warranties set forth herein are in addition to all other warranties, express or implied, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose.
- C. Where express loss liabilities set forth herein provide for a higher loss limitation liability than as set forth in this Article, or where such express provisions impose Contractor liability “without limitation”, such express warranties, obligations and indemnifications shall supersede the loss limitation cap contained in this Article. For any suit, action, claim, damages or costs arising under or connected to the title, patent and copyright actions by third parties, Contractor shall be fully liable for damages without limitation.

ARTICLE 23 - Warranty for Deliverables/Workmanship

- A. Contractor guarantees that any required deliverables, tangible or intangible, regardless of form, shall be unconditionally guaranteed for a minimum of ninety calendar days from the contract completion date. The Contractor may offer a longer warranty by setting forth the terms and costs thereof in the project Bid. This warranty will be voided by the CSA's misuse, accident, operation in other than the Specified Operating Environment, unauthorized modification of the source code, improper maintenance or failure caused by a product for which Contractor is not responsible.

ARTICLE 24 - Federal Requirements

- A. The Contractor agrees to provide a written document stating compliance with Federal Executive Order 11246, the Copeland “Anti-Kickback Act” (18 USC 874), Section 508 of the Federal Clean Air Act, Section 306 of the Federal Clean Water Act. This document must also certify that neither the Contractor nor its principals are debarred or suspended from Federal financial assistance programs and activities and to complete and return in pursuit of such certification any appropriate form required by the OTDA (see Federal Executive Order 12549 and 7 CFR Part 3017).

- B. The Contractor agrees to comply with the provisions of Section 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.), and further agrees to have their representative execute the certification attached to this RFP in Appendix B.2, Form 12.

ARTICLE 25 - Performance Standards

It is the expectation of the NCS that the integrity and responsiveness of the EBT system be of the highest quality and that the requirements throughout this RFP are met. This section outlines the performance standards and the methods and potential dollar amounts for the assessment of liquidated damages for failure to meet performance standards. The NCS may include additional performance remedies, including liquidated damages, in their individual State contracts to recoup State losses incurred due to Contractor non-conformance with performance standards. The core Cost Per Case Month pricing shall not reflect the inclusion of liquidated damages and/or Letters of Credit or Performance Bonds.

A. Performance Standards

To ensure the Contractor provides uninterrupted services to clients and SNAP merchants, and meets the performance standards set forth in USDA FNS regulation, the NCS has defined and provided in this RFP a set of EBT system and service performance standards. It is the intent of the NCS to remedy any non-performance through specific remedies as defined for each CSA within the Performance Standard descriptions. In addition, at State option, the NCS may also include additional performance remedies, including liquidated damages, in their individual State contracts to recoup State losses incurred due to Contractor non-conformance with performance standards.

The Contractor must adhere to the performance standards as set forth in this RFP and in the requirements of this document.

The Contractor must provide a consolidated report or individual specific reports of their performance as described in this RFP. Each report, or section of the consolidated report, must provide in detail the actual measures of performance for that standard. For example, if the standard requires daily or weekly conformity, then the report will detail actual daily or weekly performance. The report(s) must also detail the degree to which the contractor either satisfied or did not satisfy the requirements of the standard. The detail must be sufficient so as to allow each state to calculate potential liquidated damages in the event of failure to perform. The CSA will work with the Contractor during system design/development to determine performance report/file details.

Should Contractor performance fall below the predefined standard, as measured by either Contractor reporting or the result of CSA monitoring, the CSA will reserve the right to assess liquidated damages and/or require that the Contractor develop and fully implement a corrective action plan. The corrective action plan must be delivered within five business days of the determination that the performance standard is not being met. Upon approval by the CSA the corrective action must be implemented no later than five days from the date the plan is approved by the CSA.

The contractor must provide immediate oral and written electronic notification in the form of an Impact Statement to the CSA of any incidents, issues, or problems including, but not limited to, system outages, customer service delays, non-compliance with performance standards or deliverable due dates. Notification must provide immediate and open communication between the contractor and the individual CSA personnel to allow for maximum CSA involvement in the planning, execution, and evaluation of any action(s) taken.

The Impact Statement must include date and time of discovery, manner of discovery, nature of the incident or problem, affected service, category and severity, responsible individual, and next steps identified.

Incident or problem investigation must be followed up within a reasonable amount of time, but in no instance more than five (5) calendar days from the initial Impact Statement, with a written resolution report, including specific information documenting the nature of the problem and event triggers, the necessary actions/steps to resolve/correct the problem; estimated timeframes for implementation of the resolution; and the lead contractor personnel responsible for assuring resolution of the problem.

Events or problems identified by the CSA must also adhere to the aforementioned standards and must be addressed by the contractor with the same expectations specified above. In the event the contractor fails to comply with the requirements specified above, the affected CSA reserves the right to withhold 1% of the most current monthly voucher or \$10,000, whichever is greater.

B. Penalty Calculation Description

As described below each CSA has authority to assess full or partial liquidated damages at its discretion for non-compliance with performance standards. In the event of contractor deficiencies in meeting performance standards, the CSA may opt to withhold a percentage of the monthly billing times the “State Multiplier” until such time as the deficiency is cured. The State Multiplier for each CSA is indicated below and will be used to determine the total dollar amount to assess the liquidated damage value if the Benchmark/Threshold falls below the standard. Such action shall not affect the CSA’s right to assess liquidated damages per the terms of the contract.

Example Penalty Calculation Example:

\$2,500 = dollar value;

1 = the whole point below the standard. In this case the contractor failed to meet the benchmark/threshold of 99.9%, and was reported @98.9%;

\$2,500 = the dollar value multiplied by the State multiplier;

\$2,500 X 2 (NYS State Multiplier).

\$5,000 = assessed damage value.

Host and Transaction Processing, Communications Facilities, and Hot Backup

#	Performance Standard	Benchmark/ Threshold Measurement and Frequency	Liquidated Damages / Calculations
1	<p>% of Availability (Uptime):</p> <p>1a.) EBT System Availability (Uptime): 24 hrs a day, 7 days a week, 365 days a year, except for scheduled downtime, measured per month, for EBT Processor, transaction switch, and EBT Third Party Processors.</p>	<ul style="list-style-type: none"> • 99.9% • Monthly 	<ul style="list-style-type: none"> • 1st outage- 1% of monthly bill. For each additional hour segment an additional ½ % will be added. Result for each state multiplier. • 2nd outage- 2% of monthly bill. For each additional hour segment an additional ½ % will be added. An additional ½ % for each subsequent outage >2 will be added. Result for each state multiplier. • SM: NY=1, CT=10/RI=5/VT=5/NH=5, MA=5
	<p>1b.) Client Web Portal Availability (Uptime): 24 hrs a day, 7 days a week, 365 days a year, except for scheduled downtime.</p>	<ul style="list-style-type: none"> • 99% • Daily 	<ul style="list-style-type: none"> • \$2500 for each whole % point below standard times state multiplier • SM: NY=1, CT =1/RI=1/VT=1/NH=1, MA=1
	<p>1c.) SOAP Communication Availability: 24 hrs a day, 7 days a week, 365 days a year, except for scheduled downtime. Currently this communication protocol is specific to NYS and Massachusetts and liquidated damages stated herein are applicable. During the contract term other CSA's may choose to develop and implement this technology at which time liquidated</p>	<ul style="list-style-type: none"> • 99% • Daily 	<ul style="list-style-type: none"> • \$2500 for each whole % point below the standard, except for scheduled down time, for each state multiplier • SM: NY=2, CT =1/RI=1/VT=1/NH=1, MA=1

	damages may be assessed should the contractor fail to meet the benchmark once the CSA's ability to support this communication has been developed and implemented on the System Baseline.		
	1d.) EBT Administrative System Availability (Uptime): 24 hrs a day, 7 days a week, 365 days a year, except for scheduled downtime.	<ul style="list-style-type: none"> • 99 % • Daily 	<ul style="list-style-type: none"> • \$2500 for each whole % point below standard times state multiplier • SM: NY=2, CT =1/RI=1/VT=1/NH=1, MA=1
2	2a.) EBT POS Transactions via Leased Lines: % of System Transactions Executed Within Response Time Threshold	<ul style="list-style-type: none"> • 98% executed within 10 seconds • 100% executed within 15 seconds • Monthly 	<ul style="list-style-type: none"> • \$2500 for each whole % point below standard times state multiplier • SM: NY=2, CT =1/RI=1/VT=1/NH=1, MA=1
	2b.) EBT POS Transactions via Dial Up Systems:	<ul style="list-style-type: none"> • 95% executed within 15 seconds • 100% executed within 20 seconds • Monthly 	<ul style="list-style-type: none"> • \$2500 for each whole % point below standard times state multiplier • SM: NY=2, CT =1/RI=1/VT=1/NH=1, MA=1
	2c.) EBT Administrative Functionality Transactions These transactions include, but are not limited to posting of a benefit, account set up records, and account repayment.	<ul style="list-style-type: none"> • 99% processed within 2 seconds • Monthly 	<ul style="list-style-type: none"> • \$5000 for each whole % point below standard times state multiplier. • SM:NY=10 CT =1/RI=1/VT=1/NH=1, MA=1
	2d.) EBT Cardholder Web or IVR Transactions: Includes any transaction initiated via the cardholder web	<ul style="list-style-type: none"> • 99% executed within 3 	<ul style="list-style-type: none"> • \$5000 for each whole % point below

	portal or IVR.	seconds <ul style="list-style-type: none"> Monthly 	standard times state multiplier. <ul style="list-style-type: none"> SM: NY=10 CT =1/RI=1/VT=1/NH=1, MA=1
	2e.) SOAP Record Communication Transmission Rate Number: No less than 1500 records, incoming and outgoing, transferred per hour or maximum records sent. Currently this communication protocol is specific to NYS and Massachusetts and liquidated damages stated herein are applicable. During the contract term other CSA's may choose to develop and implement this technology at which time liquidated damages may be assessed should the contractor fail to meet the benchmark once the CSA's ability to support this communication has been developed and implemented on the System Baseline.	<ul style="list-style-type: none"> Processes 99% Monthly 	<ul style="list-style-type: none"> \$5000 for each whole % point below the hourly standard times state multiplier. SM: NY=10 CT =1/RI=1/VT=1/NH=1, MA=1
	2f.) Incoming SOAP Communication: Records received via SOAP communication This communication protocol is specific to NYS and Massachusetts. At state option, each CSA may choose to develop and implement this technology during the contract term. Liquidated Damages may be assessed upon the contractor's failure to meet the benchmark once the CSA's ability to support this communication has been developed and implemented on the System Baseline.	<ul style="list-style-type: none"> 99% of records are processed within 3 seconds of receipt Monthly 	<ul style="list-style-type: none"> \$5000 for each whole % point per day below standard times state multiplier. SM: NY=10 CT =1/RI=1/VT=1/NH=1, MA=1
	2g.) Data File Processing: All data file records, including but not limited to Benefit Files and CBIC Batch Update Files received via FTP or any other means.	<ul style="list-style-type: none"> 99% of files are processed within 1 hour of receipt Monthly 	<ul style="list-style-type: none"> \$5000 for each whole % point below standard times state multiplier. SM: NY=10 CT =1/RI=1/VT=1/NH=1, MA=1
3	# of Inaccurate Transactions 3a.) Inaccurate EBT Financial Transactions: This includes any transactions made directly by the contractor	<ul style="list-style-type: none"> 99.9% accuracy 	<ul style="list-style-type: none"> \$5000 times number of days under standard

<p>and any of its sub-contractors acquiring networks. For example, transactions incorrectly (or erroneously) denied, funds drawn from an incorrect account; overdraws of benefit accounts; incorrect debits and credits, including adjustments and reversals (Amended <u>1/4/13</u>); failure to apply requested benefit cancelations; and/or incorrect postings of benefits to cardholder EBT accounts.</p>	<p>assessed per day.</p> <ul style="list-style-type: none"> • Reported Monthly 	<p>times state multiplier.</p> <ul style="list-style-type: none"> • SM: NY=2 CT =1/RI=1/VT=1/NH=1, MA=1
<p>3b.) Inaccurate EBT Transactions processed via the IVR or Client Web Portal.</p>	<ul style="list-style-type: none"> • 99.9% accuracy assessed per day • Reported Monthly 	<ul style="list-style-type: none"> • \$5000 times number of days under standard times state multiplier. • SM: NY=2 CT =1/RI=1/VT=1/NH=1, MA=1

4	Data Files and Reports Accuracy and Transmission 4a.) Data File Transmission: Data files are sent according to the daily/ monthly schedule as defined in this RFP.	<ul style="list-style-type: none"> • 100% of data files are sent within 1 hour • Monthly 	<ul style="list-style-type: none"> • \$5000 for each whole % point below standard times state multiplier. • SM: NY=2 CT=2/NH=1/RI=1/VT=1, MA=2
	4b.) Data File Transmission Accuracy: Data files are accurately formatted and data is accurate.	<ul style="list-style-type: none"> • 100% of data files are accurate • Monthly 	<ul style="list-style-type: none"> • \$5000 for each whole % point below standard times state multiplier. • SM: NY=2 CT=2/NH=1/RI=1/VT=1, MA=1
	4c.) Report Transmission: Reports are sent according to the daily/ monthly schedule as defined in Appendix 15 and this RFP.	<ul style="list-style-type: none"> • 99.9% of reports are sent within 1 hour of the defined deliverable. • Monthly 	<ul style="list-style-type: none"> • \$2500 for each whole % point below standard times state multiplier. • SM: NY=2 CT=1/NH=1/RI=1/VT=1, MA=1
	4d.) Report Accuracy: Reports are accurately formatted and data is accurate.	<ul style="list-style-type: none"> • 99.9% of reports are accurate • Monthly 	<ul style="list-style-type: none"> • \$2500 for each whole % point below standard times state multiplier. • SM: NY=2 CT=1/NH=1/RI=1/VT=1, MA=1
	4 e.) File Accuracy: Timely FNS file transmissions of ALERT, AMA, and STARS in accordance to Appendix 15 of the RFP.	<ul style="list-style-type: none"> • 100% of data files are accurate. • Daily/Monthly 	<ul style="list-style-type: none"> • \$1,000 per instance for files that are delayed more than two (2) days. • An additional \$1,000 for each additional day after the first two days the files are delayed. • \$1,000 each time the “ALERT” file is entirely rejected by FNS. This also applies when the “ALERT” file is entirely rejected multiple times in a month/day exceeding the permitted number of file rejections. • SM: NY=2/ CT=1/NH=1/RI=1/VT=1, MA=1

5	<p>Cards and PINS</p> <p>5a.) Mailed Card Turn Around Time: Mailed cards are produced and mailed within 3 calendar days. The calendar date of receipt of the data by the Contractor will be considered day zero. Following day zero, the first business day will be considered Day 1. Day 2 will be the first business day following day one, and Day 3 will be the first business day following day two. Cards will be measured as delayed if produced on Day 3 or greater.</p>	<ul style="list-style-type: none"> • 100% of cards produced within 3 calendar days. • Monthly 	<ul style="list-style-type: none"> • Cards produced on day 3 and any subsequent delayed days, the CSA will not be charged for those cards and corresponding postage. • Cards produced on or after day 3, an additional charge will be calculated as the total card cost times the number of cards times the number of days delayed minus 1. Example: 5,000 cards delayed for 3 days will be assessed at the rate of the cost of <i>one</i> card x 5,000 x 2. The cost per card in place within the contract cycle will be used to determine the damages.
	<p>5b.) OTC Card Turnaround Time: OTC cards are produced within 1 hour from a client arriving at the CSA designated site.</p>	<ul style="list-style-type: none"> • 90% of cards produced within 1 hour • Monthly 	<ul style="list-style-type: none"> • \$300 for each whole % point below standard times state multiplier. • SM: SM: NY=2 CT=1/NH=1/RI=1/VT=1, MA=1
	<p>5c.) Bulk Shipment Card Turnaround Time: Cards are delivered within State time frame. NY/VT= 20 days CT/NH/RI/MA=5 days</p>	<ul style="list-style-type: none"> • 100% on time card delivery • Monthly 	<ul style="list-style-type: none"> • \$1000 for each business day a bulk shipment is late.
	<p>5d.) Card Standards: Cards meet ISO standards as defined in this RFP.</p>	<ul style="list-style-type: none"> • 100% ISO compliance • Monthly 	<ul style="list-style-type: none"> • \$10 times number of non-compliant cards.
	<p>5e.) PIN Mailer Turnaround Time: PIN Mailers are produced and mailed within 1 business day.</p>	<ul style="list-style-type: none"> • 90% of PIN Mailers produced and mailed within 1 business day. • Monthly 	<ul style="list-style-type: none"> • PIN mailers produced and mailed on 2nd business and any subsequent delayed days, the CSA will not be charged for those PIN mailers and corresponding postage. • PIN mailers produced and mailed on or after 3rd business day an additional charge will be calculated as follows; total number of delayed

			PIN Mailers times the number of days delayed minus 1.
	5f.) PIN Mailer Accuracy: PIN Mailers are accurately formatted and the data contained within the PIN Mailer is accurate.	<ul style="list-style-type: none"> • 100% of PIN Mailers are accurate • Monthly 	<ul style="list-style-type: none"> • \$5000 1000 (Amended 12/28/12) for each whole % point below standard times state multiplier. • SM: NY=2 /CT=1/NH=1/RI=1/VT=1, MA=1 • Additionally, CSA will not be charged for inaccurate PIN mailers and corresponding postage.
	5g.) PIN Selection Device Availability: PIN selection devices will be available and working as defined in this RFP.	<ul style="list-style-type: none"> • 100% of PIN Selection Uptime • Monthly 	<ul style="list-style-type: none"> • \$2500 for each whole % point below standard times state multiplier • SM: SM: NY=2/CT=1/NH=1/RI=1/VT=1, MA=1
	5h.) PIN Selection Transaction Processing: Timing begins upon entry of client PIN for processing.	<ul style="list-style-type: none"> • 98% executed within 45 seconds or less • Monthly 	<ul style="list-style-type: none"> • \$2500 for each whole % point below standard times state multiplier • SM: SM: NY=2/CT=1/NH=1/RI=1/VT=1, MA=1
6	Direct Deposit and Direct Deposit Returns 6a.) Direct Deposit and Direct Deposit Accuracy: Direct Deposits and Direct Deposit Returns are accurate and formatted and data is accurate.	<ul style="list-style-type: none"> • 100% of direct deposits and returns are accurate • Monthly 	<ul style="list-style-type: none"> • \$5000 for each whole % point below standard times state multiplier • SM: NY=2/CT=1/NH=1/RI=1/VT=1, MA=1
	6b.) Direct Deposit and Direct Deposit Timeliness: Direct Deposits Direct Deposit Returns are processed in the time as specified Section 5.2.1.	<ul style="list-style-type: none"> • 100% of direct deposits and returns are on time • Monthly 	<ul style="list-style-type: none"> • \$5000 for each whole % point below standard times state multiplier • SM: NY=2 CT=1/NH=1/RI=1/VT=1, MA=1
7	Settlement and Reconciliation 7a.) SNAP: EBT contractor must provide credits to the financial institution holding the accounts for retailers or third party processors	<ul style="list-style-type: none"> • 100% compliance with regulations and standards 	<ul style="list-style-type: none"> • \$1000 per occurrence beyond the measured cutover settlement, times state multiplier • SM: NY=2 CT=1/NH=1/RI=1/VT=1, MA=1

	within two business days of the daily cutover period for retailer settlements in accordance with Federal regulations and AMA and ASAP standards.	<ul style="list-style-type: none"> Monthly 	<ul style="list-style-type: none"> Additionally, contractor is liable for the value of benefits incorrectly applied and any bank costs, charges, or damages that government or retailers may accrue from missed or incorrect settlement processing.
	7b.) Cash: EBT contractor must provide credits to the financial institution holding the accounts for retailers or third party processors according to applicable network rules and QUEST Operating Rules.	<ul style="list-style-type: none"> 100% compliance with regulations and standards Monthly 	<ul style="list-style-type: none"> \$1000 per occurrence beyond the applicable network or QUEST settlement rules, times state multiplier SM: NY=1 CT=1/NH=1/RI=1/VT=1, MA=1 Additionally, contractor is liable for the value of benefits incorrectly applied and any bank costs, charges, or damages that government or retailers may accrue from missed or incorrect settlement processing.
8	Disaster Preparation and Contingency Planning		
	8a.) Continuation of Business (COB) Testing: COB test conducted annually on mutually agreed upon date.	<ul style="list-style-type: none"> COB is conducted on annual scheduled date. 	<ul style="list-style-type: none"> \$2500 per month delayed from scheduled date, times state multiplier SM: NY=10/NH=2 VT=2 CT=2 RI=2, MA=2
	8b.) Continuation of Business (COB) Reporting: Complete COB reporting as described in this RFP.	<ul style="list-style-type: none"> Received within 30 days of completion of COB test. 	<ul style="list-style-type: none"> \$2500 per month if delayed beyond the 30 days of completion, times state multiplier SM: NY=10/NH=2 VT=2 CT=2 RI=2, MA=2
	8c.) Continuation of Business (COB) Accuracy: COB is conducted as specified in this RFP with no unexpected disruptions to normal EBT processing.	<ul style="list-style-type: none"> 100% Accuracy (0 incidents) 	<ul style="list-style-type: none"> \$2500 per incident times state multiplier SM: NY=10/NH=2 VT=2 CT=2 RI=2, MA=2 Any actual damages in excess of the liquidated damages cited by the CSA as a result of the failure of the COB or unexpected incidents as a result of the COB, including, but not limited to, additional costs incurred by the CSA.

9	<p>Transition/Conversion Plan</p> <p>9a.) Transition/Conversion Timeliness: contractor must assume EBT processing according to the schedule determined in this RFP and as noted during contract negotiations. The ensuing EBT contractor must prepare a Transition and Conversion Plan that complies with the FNS EBT System Transition Guide, Version 2.0, June 6, 2005 or the most recent version issued by FNS. Upon termination of the contract, the contractor must cooperate with the future EBT contractor to ensure a timely and accurate conversion of a the 3-Year on-line transaction history.</p>	<ul style="list-style-type: none"> • 98% of deadlines • daily/ weekly during conversion in accordance to the plan. 	<ul style="list-style-type: none"> • \$500 per day times the number of days delayed for each individual deliverable described in the plan. • Additionally, actual damages in excess of the liquidated damages cited above incurred by the CSA as a result of the failure by the Offeror to convert the EBT systems and processing by the scheduled conversion date, including, but not limited to, additional costs for the continuation of EBT services. • SM: NY=5/NH=2/VT=2/CT=2/RI =2, MA=2
	<p>9b.) Transition/ Conversion Plan Accuracy: contractor must accurately transition and convert EBT data and processes as defined in the RFP.</p>	<ul style="list-style-type: none"> • 100% (0 incidents) • daily/ weekly during transition/ conversion 	<ul style="list-style-type: none"> • \$2500 per incident times state multiplier. • SM: NY=5 /NH=2/VT=2/CT=2/RI =2, MA=2 • Additionally, actual damages in excess of the liquidated damages cited above incurred by the CSA as a result of the incident.
10	<p>Retailer Management, Customer Service and Training</p> <p>10a.) Answer Timeliness: Cardholder and retailer calls answered by automated system as defined in this RFP.</p> <p>▪ 10b.) IVR Calls Answered: Cardholder and retailer calls answered by IVR after menu selection</p> <p>▪ 10c.) Call Selection Wait</p>	<ul style="list-style-type: none"> • 98.5% within 20 seconds • Monthly • 100% within 5 seconds • Monthly • 100 99.8% 	<ul style="list-style-type: none"> • 1% of the total EBT monthly billing as defined in the RFP times state multiplier. • SM: NY=1/CT=1/RI=1/VT=3/NH=1, MA=1 • For each whole % point above the standard, 1% of the total EBT monthly billing times state multiplier. • SM: NY=1/CT=1/RI=1/VT=3/NH=1, MA=1 • 1% of the total EBT monthly billing times state

	<p>Period: Cardholder or retailer calls answered by live operator.</p>	<p>(Amended 1/4/13) answered by live operator within 2 minutes.</p> <ul style="list-style-type: none"> • 3% answered by live operator within 30 seconds. • Monthly 	<p>multiplier for <i>each</i> standard.</p> <ul style="list-style-type: none"> • SM: NY=1/CT=5/RI=1/VT=3/NH=1, MA=1
	<ul style="list-style-type: none"> ▪ 10d.) Abandon Call Rate: Cardholder and retailer calls abandon call rate 	<ul style="list-style-type: none"> • < 5% • Monthly 	<ul style="list-style-type: none"> • For each whole % point above the standard, 1% of the total EBT monthly billing times state multiplier • SM: NY=1/CT=1/RI=1/VT=3/NH=1, MA=1
	<ul style="list-style-type: none"> ▪ 10e.) Blocked/ Busy Signals: Cardholder or retailer calls. 	<ul style="list-style-type: none"> • 0% for first 400 concurrent callers • < 2% after the first 400 concurrent callers • Monthly 	<ul style="list-style-type: none"> • For each whole % point above the standard, 1% of the total EBT monthly billing times state multiplier for <i>each</i> standard. • SM: NY=1/CT=1/RI=1/VT=3/NH=1, MA=1
	<p>10f.) Cardholder Service Line Availability: Customer Service toll free line is available 24 hours per day, 7 days per week.</p>	<ul style="list-style-type: none"> • 100% • Monthly 	<ul style="list-style-type: none"> • \$2500 for each whole % point below standard times state multiplier. • SM: NY=2 /CT=1/RI=1/VT=1/NH=1, MA=1
11	<p>Incident, Problem, Change and Release Management (Amended 1/4/13)</p> <p>11a.) Incident/Problem Management; Incident/Problem Response Time: Contractor documents and submits an impact</p>	<ul style="list-style-type: none"> • Immediate for CSA and Contractor 	<p>Events, incidents or problems identified by the CSA must also adhere to the following standards and must be addressed by the contractor with the same expectations specified in Section 11.7.2 of the RFP. In the event the contractor fails to comply with the specified requirements, the affected CSA reserves the right to withhold 1% of the most current monthly</p>

statement to incidents /problems reported by the CSA or the Contractor.	<p>detected/reported incidents/problems.</p> <ul style="list-style-type: none"> • 5 business days for Contractor detected/ reported problems: • Quarterly 	<p>voucher or \$10,000, whichever is greater.</p> <ul style="list-style-type: none"> • \$1,000 per problem per month delayed reporting times state multiplier. • SM: NY=2 /CT=2/RI=1/VT=1/NH=1, MA=1
11b.) Incident/Problem Written Resolution Report: (Amended 1/4/13) Contractor investigates and provides written resolution report for Contractor or CSA reported incidents and problems as described in Section 11.7.2 of the RFP.	<ul style="list-style-type: none"> • Within 5 calendar days for Contractor and CSA detected and/or reported incidents/problems. 	<ul style="list-style-type: none"> • \$1,000 per reported incident/problem per month where a written resolution is not provided times the state multiplier. • SM: NY=2 /CT=2/RI=1/VT=1/NH=1, MA=1
11c.) Incident Management: % of Repeat Incidents: % of incidents that can be classified as a repeat incident, relative to all incidents.	<ul style="list-style-type: none"> • 2% • Quarterly 	<ul style="list-style-type: none"> • Number of repeat incidents times \$500 times state multiplier • SM: NY=2 /CT=2/RI=1/VT=1/NH=1, MA=1
11d.) Incident Management: % of Incidents Resolved within target/deadline: # of incidents closed within allowed time frame, relative to the total number of incidents.	<ul style="list-style-type: none"> • 99% • Quarterly 	<ul style="list-style-type: none"> • \$500 per incident not resolved times month(s) delayed times state multiplier • SM: NY=2 /CT=2/RI=1/VT=1/NH=1, MA=1
	<ul style="list-style-type: none"> • 	<ul style="list-style-type: none"> •
11e.) Problem Management: % of Repeat Problems: % of problems that can be classified as a repeat problem, relative to all incidents.	<ul style="list-style-type: none"> • 0% • Quarterly 	<ul style="list-style-type: none"> • Number of repeat problems times \$2500 times state multiplier • SM: NY=2 CT/RI/VT/NH/MA=1
11f.) Problem Management: % of Problems Resolved within target/deadline: # of problems closed within allowed time frame, relative to the total number of problems.	<ul style="list-style-type: none"> • 99% • Quarterly 	<ul style="list-style-type: none"> • \$2500 per problem not resolved times month(s) delayed times state multiplier • SM: NY=2 /CT=2/RI=1/VT=1/NH=1, MA=1
11g.) Change Management: Time (Days) Request for Change Response: Change	<ul style="list-style-type: none"> • 14 calendar days • Quarterly 	<ul style="list-style-type: none"> • \$250 per day delayed times state multiplier • SM: NY=2 /CT=1/RI=1/VT=1/NH=1, MA=1

Request Form and the results are returned as defined in this RFP.		
11h.) Change Management: % of Changes Implemented within target/deadline: # of changes implemented within allowed time frame, relative to the total number of changes.	<ul style="list-style-type: none"> • 99% • Quarterly 	<ul style="list-style-type: none"> • \$2500 per change not implemented times month(s) delayed times state multiplier • SM: NY=2 /CT=2/RI=1/VT=1/NH=1, MA=1
11i.) Change Management: % of Unauthorized Implemented Changes: # of implemented changes that were not authorized by the CSA relative the total implemented changes.	<ul style="list-style-type: none"> • 0% • Quarterly 	<ul style="list-style-type: none"> • \$5000 per change not authorized times state multiplier • SM: NY=2 /CT=2/RI=1/VT=1/NH=1, MA=1
11j.) Change Management: % of Changes that Cause Incidents: # of implemented changes that have caused incidents relative the total implemented changes.	<ul style="list-style-type: none"> • 0% • Quarterly 	<ul style="list-style-type: none"> • \$2500 per unique incident times state multiplier • SM: NY=2 /CT=2/RI=1/VT=1/NH=1, MA=1
11k.) Change Management: % of Backed Out Changes: # of closed changes which were rolled back relative to the total number of changes.	<ul style="list-style-type: none"> • 0% • Quarterly 	<ul style="list-style-type: none"> • \$2500 per backed out change times state multiplier • SM: NY=2 /CT=2/RI=1/VT=1/NH=1, MA=1
11l.) Release Management: % of Unauthorized implemented Releases: # of releases that were not authorized by the CSA relative the total releases.	<ul style="list-style-type: none"> • 0% • Quarterly 	<ul style="list-style-type: none"> • \$5000 per release not authorized times state multiplier • SM: NY=2 /CT=2/RI=1/VT=1/NH=1, MA=1
11m.) Release Management: % of Backed Out Releases: # of releases which were backed out relative to the total number of releases.	<ul style="list-style-type: none"> • 0% • Quarterly 	<ul style="list-style-type: none"> • \$2500 per backed out release times state multiplier • SM: NY=2 /CT=2/RI=1/VT=1/NH=1, MA=1
11n.) Release Management: % of Releases Implemented on Schedule: # of releases implemented within allowed time frame, relative to the total number of releases.	<ul style="list-style-type: none"> • 99% • Quarterly 	<ul style="list-style-type: none"> • \$2500 per release not implemented times month(s) delayed times state multiplier • SM: NY=2 /CT=2/RI=1/VT=1/NH=1, MA=1
11o.) Release Management: % of Releases that Cause Incidents: # of releases that have	<ul style="list-style-type: none"> • 0% 	<ul style="list-style-type: none"> • \$2500 per unique incident times state multiplier

	caused incidents relative to the total releases.	<ul style="list-style-type: none"> Quarterly 	<ul style="list-style-type: none"> SM: NY=2 /CT=2/RI=1/VT=1/NH=1, MA=1
12	Cash Access 12a.) Cash Access Availability: Contractor provides continuous cash access as defined in this RFP.	<ul style="list-style-type: none"> 100% Quarterly 	<ul style="list-style-type: none"> 10% of monthly EBT billing will be withheld until Contractor meets cash access standard.
13	Adjustment Processing 13a.) The contractor must adjust cardholder accounts, as applicable by FNS regulation or QUEST Rules, to correct auditable, out-of-balance settlement conditions that result from a system error. A system error is defined as an auditable processing failure at any point in the redemption process that results in the improper crediting or debiting of an account or the failure to credit or debit an account. The adjustment transaction must reference the original transaction that is completely or partially erroneous.	<ul style="list-style-type: none"> 100% Monthly 	<ul style="list-style-type: none"> \$250 per deadline missed times state multiplier. SM: NY=2 CT=2/NH=1/RI=1/VT=1, MA=1

ARTICLE 26 - Negotiated Changes to the RFP and Contractor's Proposal

Reserved

ARTICLE 27 – Selected Optional Services

Reserved

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APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE
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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, licensor, licensee, lessor, lessee or any other party):

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

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

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

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

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

6. **NON-DISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY (EEO) AND MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE (M/WBE).** All work conducted under this contract must be in compliance with the specifications set forth in the applicable Request for Proposal and OTDA's policies and procedures set forth in Appendix A, Standard Clauses for NYS Contracts and as may be amended from time to time. By submission of its bid/proposal, the successful Contractor agrees that it will not discriminate against any employee or applicant for employment 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, and as more fully set forth in paragraph five of Appendix A. By submission of its bid/proposal, the Contractor further agrees that it will comply with applicable Federal, State and Local requirements concerning Equal Employment Opportunity and opportunities for Minority and Women Business Enterprises, including but not limited to the Statute and its implementing regulations as promulgated by the New York State Division of Minority and Women's Business Development (DMWBD) and set forth at 5 NYCRR Parts 140-144), and as more fully set forth in paragraph twelve of Appendix A . The Contractor further agrees that it will comply with OTDA's Appendix Z, attached and incorporated by reference herein, for the specific EEO/MWBE requirements and associated forms required for this procurement.

7. 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.

8. 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.

9. 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).

10. 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.

11. 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.

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

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

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

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

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and (c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

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

14. 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.

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

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

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

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

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

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl St -- 2nd Floor

Albany, New York 12245
Telephone: 518-292-5250
Fax: 518-292-5803
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million: (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

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

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

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

22. 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.

23. 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).

24. 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.

25. 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.

26. 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.