

**New York State Office of Temporary
And Disability Assistance**

**Common Benefit Identification Card (CBIC)
Request for Proposal**

**Appendix A
Contract Terms and Conditions**

Appendix A

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Appendix A-1: Standard Clauses for New York State Contracts

ARTICLE 1
Agreement, Duration, and Amendment

- A. This Agreement shall commence on December 18, 2012. The Contractor will be granted access to the OTC facilities on January 28, 2013 for the 10 week period prior to the start of card production. During this time, the Contractor will conduct acceptance testing and prepare for card production. Card production shall commence on April 8, 2013 for sixty (60) full months of production.

Up to two extensions of up to 12 months each may be required at the sole discretion of the OTDA. Any extension will be subject to approval by the OSC. 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 OTDA of its option to exercise such extension(s) no less than 90 calendar days prior to the termination 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. Notwithstanding Section A of this Article, the OTDA and the Contractor shall have the right to renegotiate the terms and conditions of the Agreement in the event applicable Federal or State of New York law, regulations, policy, rules 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. Pricing shall be governed per Article 6. It shall be understood that, in the event the OTDA 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 Federal or State of New York law, regulations, policy, rules and guidelines shall be decided by the Commissioner of OTDA or his/her duly authorized representative(s) or designee(s), in accordance with Article 10 of this Agreement, Interpretations and Disputes. Should such changes to Federal or State of New York 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.
- C. This Agreement is subject to amendment only upon mutual consent of the parties, reduced to writing and approved as required by the State of New York.

ARTICLE 2
Standard Contract Provisions

- A. The parties agree that this Agreement shall be construed and interpreted in accordance with the laws of the State of New York. The Contractor shall be required to bring any legal proceeding against the OTDA arising from this Agreement in the State Supreme Court in the County of Albany or the State Court of Claims.
- B. Should any provision of this 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.
- D. Notwithstanding the OTDA'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 OTDA.
- E. This Agreement, as defined in Article 9, Section A, and the Exhibits and Appendices 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 undertakings 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 OTDA as described in the RFP and its attachments and as otherwise communicated in writing by the OTDA 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 does 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.
- D. The Contractor will provide the OTDA, within fifteen (15) business days of the Office the State Comptroller's approval of this Agreement, with and will maintain in force and effect for the benefit of the OTDA, an irrevocable Letter of Credit, subject to the OTDA'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 of \$3,500,000 for the five (5) year term of this Agreement. Should the OTDA exercise its option to extend the Agreement, the Contractor will maintain in force and effect for the benefit of the OTDA, an irrevocable Letter of Credit subject to the OTDA'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 of \$3,500,000 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 OTDA 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 OTDA'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 OTDA may at its option recover said damages or liquidated damages by the deduction of such costs from monthly billing payments in amounts sufficient to cover the liquidated damages or by assessment of the letter of credit.

- E. The Contractor warrants and affirms that the information contained in its proposals submitted in response to the RFP is correct and accurate to the best of the Contractor's knowledge.
- F. 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 Offeror 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.
- G. Contractor shall comply with the provisions of the State Information Breach and Notification Act (Article 2 of the State Technology Act, and Article 39-F of the State General Business Law). Contractor shall be liable for the costs associated with such breach if caused by the Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of the Contractor's agents, officers, employees or subcontractors.
- H. Chapter 10 of the Laws of 2006 amended State Finance Law §§ 8 and 163 [1] by imposing certain reporting requirements on contractors doing business in New York State. In furtherance of these reporting requirements, the Contractor agrees to complete and submit annually certain employment information to the OTDA, the Department of Civil Service (DCS) and OSC. See Appendix B.2.2.3. .
- I. 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, shall, during the term of this Agreement, enter into agreements with any other State government customers providing better prices and warranties inconsistent with the commitments of this section, at the option of the OTDA, this Agreement shall thereupon be deemed amended to provide the same to the OTDA.

ARTICLE 4
Obligations of the Parties to this Agreement

A. Contractor Obligations

1. The Contractor agrees to provide services as outlined in the Contractor's proposal and the RFP, which will be attached to this Agreement as an Appendix, and the State agrees to pay for such services as specified in Article 6. The requirements and provisions contained in the RFP and in the Contractor's proposal shall be performed by the Contractor except where expressly superseded in this Agreement.
2. Conditioned upon and subject to OTDA's timely performance of its obligations hereunder, the Contractor accepts sole and complete responsibility for the timely accomplishment of all of Contractor's activities required under this Agreement. Specifically, the Contractor:
 - a. Must maintain an adequate administrative organizational structure sufficient to discharge its responsibilities under this contract.
 - b. Must identify, for the OTDA's prior written approval, a Project Manager who will be responsible for the overall operation of the CBIC Project including mailed card production, OTC operations, and vault card distribution.
 - c. The person designated as Project Manager cannot be changed without the written approval of the OTDA.
 - d. The OTDA's Project Director and the Contractor's Project Manager will hold regular meetings in such form, frequency, and at the time and place specified by the OTDA's Project Director that are mutually convenient. Such meetings must occur no less than monthly. At the election of OTDA, this requirement may be satisfied in an informal manner.
3. The Contractor and any proposed subcontractors must utilize the same key personnel identified in the proposal, effective with the Agreement start date and for the duration of the Agreement, unless otherwise agreed upon by the OTDA. Key Personnel designated in the Contractor's proposal, who are approved by the OTDA upon Contractor selection and contract award, are considered to be essential to the Contractor's ability to successfully perform. In the event it becomes necessary to replace one of these key personnel during the project, the Contractor must:
 - a. Provide the OTDA with 30 days prior written notification.

- b. Provide the OTDA with documentation describing the circumstances of the need for the replacement.
 - c. Provide the résumé(s) and references for proposed replacement personnel. The résumé must be in the same format as, or equivalent to, that required in response to this RFP.
 - d. Obtain prior written approval from OTDA for any key personnel changes. Approval by OTDA shall not be unreasonably withheld. Unauthorized change of key personnel may be considered material breach of the Agreement and grounds for immediate termination or assignment of liquidated damages.
 - e. Provide, at no additional cost to the OTDA, the services of the replacement personnel for a period of thirty (30) days following the date the replacement personnel commences work on the Project.
 - 1) In the event of a long-term illness, death, personal emergency, or termination of personnel employment, the thirty (30) day no-additional cost replacement period may be negotiated.
 - 2) Replacement of personnel will not be grounds for an increase in the Agreement rates or extension of the time for completion of the Agreement.
4. Must remove any employee whose continued presence, in the judgment of the OTDA Project Manager , would be detrimental to the success of the OTDA's efforts in implementing the terms of this contract. Contractor must replace the removed employee with an employee of equal or better qualifications. The OTDA Project Manager will exercise reasonable and exclusive judgment in this matter and will be required to make such a request in writing to the Contractor's Project Manager.
5. Must notify the OTDA in writing of any changes in the persons designated to bind the Contractor to this agreement.
6. Must assume responsibility for the cost and timely accomplishment of all of its activities and duties required by this Agreement and carry out those activities and duties in a competent and timely manner.
7. The Contractor must provide immediate oral and written electronic notification to the OTDA pursuant to Article 20 of any incidents, issues,

or problems including a description of each problem which threatens either parties' performance hereunder including a recommendation for resolution whenever possible. Problem notification and resolution must provide immediate and open communication between the Contractor and the individual OTDA personnel to allow for maximum OTDA 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 (7) 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 person responsible for execution of the resolution.

8. Must agree that no aspect of Contractor performance under this Agreement will be contingent upon the assistance of State personnel or the availability of State resources with the exception of any proposed actions of the Contractor specifically identified in this Agreement that require OTDA acquisition, approval, policy decisions and policy approvals and the normal cooperation which can be expected in such a contractual relationship. Such actions by the OTDA 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 OTDA or other State agencies.
9. Must reasonably cooperate with any other contractors who may be engaged by the OTDA to carry out responsibilities associated with this Agreement.
10. Must recognize and agree that any and all work performed outside the scope of this Agreement shall be deemed by the State to be gratuitous and not subject to charge by the Contractor, unless such work has been requested by the OTDA.
11. Must establish and maintain for the duration of this agreement a Site Supervisor for each of the New York City OTC sites, by whom operations will be managed and must comply with the OTC site requirements as identified in RFP Section 2.5.2.5.
12. Must provide authorized representatives of the State or Federal Government access at all reasonable times to sites operated by or on behalf of the Contractor under this contract for the purposes of inspecting or to otherwise evaluate the workplace(s) and work performed under this Agreement.

13. Must, in the event of changes mandated by Federal regulatory agencies or the State due to changes in policies, regulations, statutes, operational needs or judicial interpretations, provide detailed work plans and charges, where applicable, for the OTDA's approval and implement such changes upon the OTDA's approval. Such proposed work plan and charges will be submitted within 30 calendar days of receipt of a request for such documents from OTDA.
14. For the term of this Agreement, and for six months after its termination or expiration, each party agrees not to offer employment to any employee of the other party, except as required by law, unless mutually agreed to by the OTDA and the Contractor.
15. All Contractor or sub-contractor staff performing under this RFP must commit to and sign a Non-Disclosure Agreement, located in Appendix B.2 – Form 13, “Non-Disclosure Agreement”. Such signed agreements must be submitted to the OTDA Project Manager prior to staff commencing work on the project.
16. Except as approved by OTDA, the Contractor must conduct its work during standard State office hours, Monday through Friday.
17. The following State of New York and local district holidays should be considered during the course of this Agreement:
 - a. New Year’s Day
 - b. Martin Luther King Day
 - c. President’s Day
 - d. Memorial Day
 - e. Independence Day
 - f. Labor Day
 - g. Columbus Day
 - h. Veterans Day
 - i. Thanksgiving Day
 - j. Christmas Day

B. New York State Responsibilities

The following summarizes the responsibilities of the New York State OTDA (NYS OTDA), the New York State Department of Health (NYS DOH), and the New York State Office for Technology (NYS OFT) under this agreement.

NYS OTDA Responsibilities:

1. OTDA will designate a staff member to perform as the Project Manager for the agency and as a primary contact for the Contractor.
2. The OTDA shall ensure elements of the system or services not provided by the Contractor are delivered in a timely manner and comply with all applicable Federal and State laws and regulations. OTDA is responsible for the WMS and CBIC systems. As it relates to this Agreement, these systems perform the following functions:
 - Identify all individuals in need of a CBIC.
 - Differentiate those recipients needing a card to be mailed from those needing Over the Counter cards.
 - Differentiate those needing a photo card from those needing a nonphoto card.
 - Allow local district users to request replacement cards.
 - Assign unique numbers to each card.
 - Identify the correct mailing address for mailed cards.
 - Pass Card Request records to the CBIC contractor.
 - Pass Vault Card Issuance records to the CBIC contractor for tracking and control purposes.
 - Support a card inquiry process and make it available to eligibility workers statewide.
3. The OTDA will provide the resources described throughout this RFP.
4. OTDA shall cooperate and provide the Contractor with timely access to data, information, and personnel of OTDA. OTDA shall be responsible

for the performance of its personnel and agents and for the accuracy and completeness of data and information provided to the Contractor for purposes of the performance of the Services. OTDA acknowledges and agrees that Contractor's performance may be dependent upon the timely and effective satisfaction of the OTDA's responsibilities and the timely decisions and approvals of OTDA on all decisions and approvals duly authorized by OTDA. OTDA shall be responsible for:

- a. Making Project Management decisions and performing Project Management functions;
- b. Evaluating the adequacy and results of the services performed.

NYS OFT Responsibilities:

1. The installation and maintenance of the data communications network between the State and the CBIC Contractor and between the CBIC Contractor's primary and backup sites.
2. The installation and maintenance of the data communications network from the AFIS Contractor's office in Albany to the CBIC Contractor for transmission of photo and signature images.
3. Maintaining the data center in which the WMS and CBIC systems exist.
4. Defining the requirements and standards for data communication software and protocols.
5. Providing technical expertise and support to OTDA in technical matters associated with the NYS Network and State's Data Center.

NYS DOH Responsibilities:

1. Defining the requirements of the structure, usage and issuance of the CBIC in the Medicaid environment.
2. Maintenance of the eMedNY and eMedNY Contractor systems which use the CBIC in eligibility verification transactions.

ARTICLE 5
Contract Interests, Assignments, and Subcontracts

- A. The OTDA shall consider the Contractor to be the prime contractor and 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 OTDA 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 OTDA.
- 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. All subcontracts related to the performance of this Agreement shall be subject to the provisions of law set forth in Section 220, 220-d and 220-e of the Labor Law of the State of New York and to Article 15 and 15-A of the Executive Law of the State of New York.
- 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 APPENDIX A , attached hereto as Appendix A, 2) Audit (Article 14), 3) Access (Article 14), 4) Confidentiality (Article 15), 5) Employment Practices (Article 16), 6) Indemnification of OTDA (Article 11), 7) Termination (Article 17), and 8) the RFP Section 6 Performance Standards and Quality Assurance, including the assessment of any potential liquidated damages, for any circumstance where the subcontractor has been identified by the prime contractor as responsible for any performance standard identified in RFP Section 6.
- F. All subcontracts must contain a provision stating that the subcontractor agrees that the subcontract is subordinate to the Agreement with the OTDA and that any and all conflicting provisions of the subcontract will be superseded by the terms of this Agreement. The Contractor shall not be relieved in any way of any responsibility, duty, or obligation of this Agreement by any subcontract. Prior written approval of the OTDA is

required for all subcontractors and for all subcontracts; such approval shall not be unreasonably withheld.

- G. Prior written approval of the OTDA is required for all Contractor-initiated changes in subcontractors and for all subcontracts and for changes in vendors whose services directly impact the performance of services in this Agreement. 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 OTDA of its intent to add or replace a subcontract. Such notification must include justification for the change, provide the proposed internal staff, subcontractor's or vendor'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. Such transition work plans are subject to the review and approval of the OTDA. The OTDA 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 OTDA.
- H. The Contractor will work with the OTDA to define any potential disruption if the prime Contractor elects to terminate or change their agreements with any subcontractor or vendor.

ARTICLE 6 Payment Provisions

- A. Payments to the Contractor shall be based on the pricing and/or rates set forth in Appendix G, Cost Charts as attached. Monthly invoicing will be submitted to the OTDA in arrears by the Contractor on a Standard New York State Voucher in a form acceptable to the OTDA and must be accompanied by supporting documentation. The OTDA 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.

In the event that OTDA elects to make an up-front payment for start-up costs, payment to the Contractor shall be made as follows: 40% upon OTDA acceptance of those deliverables identified in Exhibit 11 of this RFP as due within 90 calendar days of OSC approval. The remaining 60% of startup costs will be paid upon completion and acceptance of all remaining deliverables listed in Exhibit 11. The final list of deliverables and associated due dates will be agreed to and finalized during contract negotiations. In the event that OTDA elects to amortize the start-up costs, monthly payments shall begin upon OTDA acceptance of those deliverables identified in Exhibit 11 of this RFP as due within 90 calendar days of OSC approval and shall continue for 60 consecutive months contingent upon acceptance of deliverables due after 90 calendar days. OTDA reserves the right to acquire 3rd party financing from an alternate source.

CBIC payments shall be made monthly in arrears based upon the applicable volume tier for each card type produced for each card type.

The price per card is subject to an annual adjustment on the contract anniversary date commensurate with the percentage increase or decrease in the Consumer Price Index (CPI) as published by the US Bureau of Labor Statistics for the preceding calendar year.

Vault card payments will be made upon OTDA receipt of documentation from the contractor that the number of vault cards ordered by the OTDA has been received by the Contractor and are available for distribution to the local Social Services Districts (SSD) and the New York City Human Resources Administration (HRA).

Reimbursable postage charges shall be made by OTDA monthly in arrears and subject to Contractor provided documentation validating all

such charges. Reimbursable postage charges shall be payable at cost and not subject to Contractor mark-up.

The Contractor must take advantage of all available postal rate schedules, including as appropriate ZIP pre-sort, bar coding, ZIP plus 4, and any other relevant postal price offerings which may include 3rd party pre-sort facilities. The OTDA will make monthly payments based on the number of cards mailed during the month at the proposed rate. Daily reports from the contractor must detail the postage rate utilized. Copies of the postage receipts from the Post Office for each shipment of cards must accompany each month's billing for postage.

Vault card delivery charges shall be made by OTDA monthly in arrears and subject to Contractor provided documentation validating all such charges. Reimbursable vault card delivery charges shall be payable at cost and not subject to Contractor mark-up.

- B. The State shall not be liable for the payment of any taxes under this Agreement however designated, levied or imposed. No person, firm, or corporation is exempt from paying the State Truck Mileage and Unemployment Insurances Taxes and other Federal, State, and local taxes to which the Contractor is subject.
- C. The State 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 State. For purposes of tax free transactions under the Internal Revenue Code, the New York State Registration Number is 14740026K.
- D. The Contractor grants the option to the State of New York to extend the terms and conditions of this Agreement to any other State agency in New York as well as local/county human services jurisdictions in New York for the provision of the services set forth herein.
- E. 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 Contract if it does not comply with the State Comptrollers' 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.

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>

- F. OTDA and the Contractor may mutually agree to other project-related tasks including Enhancing Change Requests in excess of the 100-hour effort defined in Article 6.G, herein which, although within the general scope of work required by this Agreement, are not required to be performed within the current pricing structure. Any such mutual agreement shall be finalized in a completed Change Request, also defined in Article 6.G. For personal services, payments to the Contractor shall be based on the rates as contained in Appendix G, Part 5. Any applicable non-personal services charges (such as equipment, COTS license fees, etc) shall be billed at cost as evidenced by invoicing to be submitted by the Contractor plus a 5% mark-up/administrative fee. Prior written approval from the State shall be required for all such tasks and total expenditures within the five year contract term will not cumulatively exceed \$750,000 over the term of the contract. The State reserves the right to require reasonable evidence, including the requirement that the Contractor follow formal bidding procedures, and that all tasks performed hereunder are obtained from the best available source, price and all other factors considered.

Prior written approval from the State shall be required for all such tasks and total expenditures. The State reserves the right to require reasonable evidence, including the requirement that the Contractor follow formal bidding procedures, and that all tasks performed hereunder are obtained from the best available source, price and all other factors considered.

G. Change Management

The Contractor shall have formal written change management procedures which address the following elements:

1. Program and System Baseline

The program and system baseline will be established upon acceptance of the conversion and approval of all Takeover activities. After the initial baseline is established, any modifications to the program or system design or functionality will be defined as a Change Request and will be documented, tracked, and managed in accordance with an approved Change and Release Management plan.

2. Changes to the Program System Baseline

Contractor-initiated or OTDA-initiated changes seek to modify the baseline system, procedures, or application programs. Such requests alter the initial scope of the program, or add or modify functionality, after the system design baseline has been determined.

All changes are categorized as remedial or enhancing. The Contractor must work with the OTDA to ensure that sufficient testing is conducted to ensure that no changes will negatively impact system functionality, OTC or mailed card production. All changes must be fully tested and approved by the OTDA before being put into production.

3. Remedial Changes

Remedial changes are defined as changes needed to make the system perform or function in the way it was designed and must not result in additional costs to the OTDA. Either the OTDA or the Contractor may identify the need for a remedial change and each party must give the other immediate notification of such need for remedial changes. The Contractor must provide immediate oral and written electronic notification that must be followed up with written documentation within seven (7) calendar days of the initial notice. Remedial changes must be tested and implemented as soon as possible or on a schedule to be approved by the OTDA.

4. Enhancing Changes

Enhancing changes are defined as changes that are not Remedial changes. These include, but are not limited to, changes that will enhance performance, provide new functionality; provide conformity to changes in State or local law, regulations, or policies; provide conformity to changes in Federal law, policies, programs or regulations, or other applicable network rules; improve cost-effectiveness; enhance efficiency and ongoing operation; or improve program maintenance.

The Contractor will provide change request services for enhancing changes herein for up to 100 person hours of effort (notwithstanding the dedicated on-site key personnel as defined in Appendix C) per contract year at no additional expense to the OTDA. The costs of the OTDA for enhancing changes requiring greater than a 100-hour effort per contract year will be compensated in full by OTDA at the rates contained in Appendix G, upon OTDA acceptance of the change. Enhancing changes above the 100 person hour effort per contract year will require the prior approval of the Office of the State Comptroller.

Change Request Process

Change requests initiated by the OTDA requesting Enhancing changes will be initiated through a Change Request Form. The OTDA will designate all Change Requests as high or low priority, and the Contractor's proposal must outline proposed timeframes for initiating changes based on priority ranking. The OTDA's CBIC Project Manager will forward a signed Change Request Form to the Contractor's designee for analysis of the request for potential impacts on existing system processes, other schedule changes, resources, hours, and applicable costs.

The Contractor will return the Change Request Form and the results of the analysis to the OTDA's CBIC Project Manager within 7 calendar days of receipt. The Contractor must provide the OTDA with a proposed development and implementation schedule for completing the change. Contractor responses to OTDA-initiated change requests must include a detailed price quote utilizing the change request pricing for personal services as submitted by the Contractor in Appendix G of its financial proposal for the requested change, including the number of hours required to perform the request. However, should such changes 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.

If the OTDA chooses to formally approve the change, the Change Request Form will be signed and dated by the OTDA's CBIC Project Manager and forwarded to the Contractor. The Contractor shall not begin work on an OTDA-initiated Change Request until written approval is received from the OTDA. The Contractor must provide a final development and implementation schedule within 7 days of receipt of the approved Change Request, and must include specific dates for development and implementation consistent with the schedule being proposed.

Upon written approval of the Change Request, the Contractor must include the change in work plans, allocate resources as appropriate, and will provide ongoing status reports as part of the regular status report, with hour and cost accounting (if any) to the OTDA. Until such time as the change has been completed and accepted by the OTDA, the OTDA will monitor implementation of the approved changes through scheduled status reports.

For Contractor-initiated changes, the Contractor must provide the OTDA with written, advance notification of all self-initiated, non-remedial changes. Written notification must include, at a minimum, known or anticipated impacts the changes will have on card

production, system or program functionality, file formats, screens, reporting, performance, and any costs or cost savings to the OTDA. The Contractor must coordinate all non-remedial changes with the OTDA. Non-remedial changes must be implemented at a time agreed upon with the OTDA, so that the availability and participation of OTDA program and technical staff can be assured. All Contractor-initiated changes are subject to the prior written approval of the OTDA. Upon such approval, the Contractor will provide the OTDA with a proposed development and implementation schedule for completing the change, including the number of hours required to perform the request.

Payment terms for change orders shall be as set forth in each negotiated change order. In the event of a dispute regarding hours invoiced under change orders, Contractor agrees to make available to OTDA the necessary internal Contractor documentation such as Contractor employee time cards and sub-contractor time cards to support the hours billed.

Release Management

The Contractor must manage software releases in a manner that ensures high-quality products with minimal deficiencies.

At the time a newly modified software version is introduced, the Contractor must provide documentation to the OTDA that the Contractor has modified the correct software version. This applies to all changes, regardless of type. The Contractor must deliver software to the OTDA accompanied by a Release Impact Statement.

Release Impact Statement

For every release, the Contractor must provide a Release Impact Statement that includes the Program release number; the Program release date to baseline; and date of Program release on the production environment. The Impact statement must also include back-out plans for the release; updated reference materials and user manuals; new version(s) of software distribution instructions, contact name and if applicable; and expectations and responsibilities of the OTDA during the planning and rollout of new releases.

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, irrevocable, royalty free right to these products, and does not include ownership or copyrights to the material. The OTDA(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 OTDA 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 OTDA for any loss, damages or actions arising from a breach of said warranty in accordance with Article 24 herein.

B. Ownership/Title to Custom Products/Programming Deliverables

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

1. “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 a change order requested under Article 6, including components transferred under perpetual license pursuant to this Article, plus any modifications or enhancements thereto and derivative works based thereon, or

created by Contractor or its subcontractors as a tool for their use in performing the services (hereinafter "Existing Material(s)").

2. "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 OTDA under an Order letter (hereinafter "Custom Material(s)").
 3. 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 OTDA 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 OTDA agrees to reproduce the copyright notice and any other legend of ownership on any copies made under the licenses granted under this paragraph.
 4. Title to Custom Material(s), excluding Existing Materials, shall be the sole and exclusive property of the OTDA, 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 OTDA 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.
 5. 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.
- C. 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 OTDA pursuant to this Agreement.
- D. Nothing in this Agreement shall be interpreted to limit such rights as the OTDA and the Federal Government must reserve to conform to all applicable Federal regulations, including 45 CFR Part 74, 45 CFR 95.617, 7 CFR Part 277 and 7 CFR Part 3016, and such rights are hereby reserved.

ARTICLE 9
Document Incorporation and Order of Precedence

- A. 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.
- B. 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 – Standard Clauses for New York State Contracts (Appendix A-1 of this RFP);
 2. Second, body of this Agreement (Appendix A of this RFP);
 3. Third, the RFP and any related attachments, exhibits, appendices, amendments, and the procurement questions and answers; and
 4. Fourth, the Contractor’s Proposal, as amended by clarification correspondence; and
 5. Fifth, Appendices other than Appendix A.
- C. 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 of OTDA's 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 consist 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/she 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 State of New York from third party suits, actions, damages and costs of every name and description relating to personal injury, death, or physical damage to real or personal property, to the extent arising as a result of negligent acts or omissions or willful misconduct of Contractor, its officers, agents, employees, subcontractors, or principals subject to the cap contained in Article 23; 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 OTDA.

- B. The OTDA may, in addition to other remedies available to them at law, retain or offset such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.

- C. As a condition to the foregoing indemnity obligations under this Article, the State shall provide Contractor with prompt notice of any claims for which indemnification may be sought hereunder, shall reasonably co-operate with Contractors (including with respect to settlements and the provision of information) 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 OTDA, the individual states, and the United States Government all 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. Electronic copies of any Agreement-related documents may be substituted for the originals with the prior written approval of the OTDA, provided that the copy procedures are accepted by the OTDA 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.

- D. All permanent CBIC card referrals and associated logs, inventory control sheets and other related documents will be retained by the Contractor for audit purposes for the life of the contract. All such records will become the property of the OTDA and will be made available for OTDA possession after contract termination. The means of storing this information must be such that specific records are easily located. The specific means of storage will be agreed to during the detailed design phase of this project. All systems records, including but not limited to card request records, card production records, photo records, signature records, "temporary to permanent" records, and parameter file records, with the exception of those purged as per agreement with OTDA, must be retained for the life of the contract and until the transfer of these to OTDA are arranged subsequent to contract termination. All such records shall be available and accessible for OTDA and/or federal audit purposes for the life of the contract.

Article 14
Disclosure and Audit of Agreement Records

- A. The responsible State agencies, United States Department of Agriculture, Food and Nutrition Service (USDA-FNS), United States Health and Human Services, 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 services in this contract. In such capacity, the OTDA or its representative(s) must have access to facilities, records, reports, personnel and other appropriate aspects of services furnished by the Contractor, in accordance with the requirements of the State Public Officers Law 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 OTDA 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 OTDA 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's 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 (see Public Officers Law section 89 (5)), 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 OTDA.
- D. The Contractor shall promptly notify the OTDA 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 OTDA 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

Security, Confidentiality and Privacy of Information and Information Assets

- 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 State and of the United States and any regulations promulgated there under.
- 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, principals or subcontractors, without the prior written approval of the OTDA.
- C. All other information about or from the OTDA'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 OTDA of all requests made to Contractor for information related to the contract.
- E. Contractor must comply with the "Information and Security Breach and Notification Act" (also known as the "Internet Security Privacy Act" – Article 2 of the State Technology Law and Article 39-F, Section 899-aa of the NYS General Business Law). In the event the Contractor has reason to believe that there has been unauthorized access to and/or use of the OTDA's data or the data system, the Contractor must provide immediate written notification to OTDA. The Contractor must cooperate with activities necessary for OTDA to determine the need for notification and/or to provide the notification(s) required. Within twenty-four (24) hours of the notification by Contractor, the Contractor must report to OTDA the steps taken or proposed to be taken in response to the instance of unauthorized access. The Contractor must also notify the OTDA of the steps taken to prevent similar instances in the future as soon as is practicable after the unauthorized access is discovered.
- F. 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.

- G. At a minimum, 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.
- H. 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.
- I. Except for personal information relating to clients and providers which shall be kept confidential pursuant to requirements of State or 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.

J. 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.

K. Public Information

1. Disclosure of items related to this Agreement shall be permitted consistent with the laws of the State of New York and specifically the Freedom of Information Law (FOIL) contained in Section 87 Article 6 of the Public Officers Law.
2. Consistent with FOIL and other applicable laws: The State shall take reasonable steps to protect from public disclosure any of the records relating to this procurement that are otherwise exempt from disclosure under FOIL; information constituting trade secrets, for purposes of FOIL, must be clearly marked and identified as such upon submission; if the Contractor intends to seek an exemption from disclosure of these materials under FOIL, the Contractor shall, at the time of submission, request the exemption in writing and provide an explanation of why the disclosure of the identified information would cause substantial injury to the competitive position of the Contractor; acceptance of identified information by the State does not constitute a determination that the information is exempt from disclosure under FOIL; and determinations as to the availability of the identified information will be made in accordance with FOIL at the time a request for such information is received by the State.

L. All Contractor or Subcontractor staff performing under this Contract must commit to and sign a Non-Disclosure Agreement, attached herewith in Appendix B-2., "Selected Contractor Forms". Such signed agreements must be submitted to the OTDA Quality Assurance Contract Manager prior to staff commencing work on the project. The Contractor's Project Manager is responsible for ensuring that all Contractor provided resources submit said Non-Disclosure Agreement.

M. 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 OTDA 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 occurs, then such modifications, improvements, and enhancements shall be the property of Contractor and Contractor hereby grants to the OTDA a non-transferable (except to sibling state agencies to the OTDA), 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 OTDA by Contractor and is used by Contractor in its provision of services occurs, 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 OTDA and has been licensed to the Contractor occurs, 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 OTDA occurs, 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 OTDA with development costs partially funded by the Contractor occurs, 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 OTDA occurs, then such derivative application software shall be jointly owned, without right of accounting.
 - g. If a new application program for the OTDA which has been entirely funded by the OTDA occurs, then such new application software shall be the property of the OTDA.

comprehensive plan from time to time, as it determines appropriate. If the Contractor is unable to determine an employee's fitness due to the results of a criminal history/ security background check, as discussed herein, the Contractor shall forward a description of the results to the OTDA, for review and determination. The Contractor's agreement to comply with the provisions of this section is a material representation of fact upon which reliance was placed when the OTDA determined to enter into this Agreement. In conducting a criminal history/ security background check, the Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings. If it is later determined that the Contractor knowingly, rendered an false positive determination of an employee's fitness, failed to conduct a criminal history/ security background check, or failed to reasonably interpret the results in confirming an employee's fitness to perform duties under the terms of this Agreement, in addition to any other remedies available to the OTDA, such as liquidated damages, the OTDA may terminate this Agreement for cause. The Contractor shall provide immediate written notice to the OTDA if at any time the Contractor learns that its determination of an employee's fitness to perform duties under the terms of this Agreement was erroneous or has become erroneous by reason of changed circumstances.

The Contractor will ensure that the provisions of this section are incorporated within all sub-contracts, and acknowledges the responsibility for ensuring that these provisions are fully complied with by all subcontractors.

ARTICLE 16
**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 (Attachment ____), 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 (Attachment ____). By submission of its bid/proposal, the successful 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 (Attachment ____). The successful 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.

ARTICLE 17
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 OTDA 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 OTDA for cause upon the failure of the Contractor to comply with the terms and conditions of this Agreement, including the attachments hereto. If the OTDA reasonably determines that the failure to comply is a) intentional or b) presents a danger to the health, safety, or welfare of the employees, agents, or citizens of the State, the OTDA may terminate the Agreement immediately upon notice to the Contractor. In all other situations, the OTDA shall provide the Contractor with a written Notice of Termination specifying what action(s) or lack of action(s) by the Contractor constitute the Contractor's failure to comply and a proposed date of termination, which shall not be earlier than the thirtieth (30th) calendar day following the date of the Notice of Termination. The Notice of Termination shall 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. The Notice of Termination will afford the Contractor the opportunity to a) cure the violation within 14 calendar days or b) submit to OTDA within 14 calendar days of the Notice of Termination a Corrective Action Plan setting forth the Contractor's proposed plan to eliminate the violation. If the Contractor does not cure the violation or submit a Corrective Action plan within 14 calendar days of the Notice of Termination, the OTDA shall be entitled to proceed with its Notice of Termination. If the Contractor submits a Corrective Action Plan within the 14 calendar days, the OTDA shall review the Corrective Action Plan and issue a written decision addressing the adequacy of the plan and, where necessary, the Contractor's performance under the Plan no later than 20 calendar days following the Notice of Termination. If, at OTDA's sole discretion, the Plan is found to be unsatisfactory, OTDA shall be entitled to proceed with its Notice of Termination. If the Plan is found, at OTDA's sole discretion, to be satisfactory, the OTDA will issue a written rescission of the Notice of Termination. If the Contractor fails to comply with the Corrective Action Plan, the OTDA may re-issue the Notice of Termination effective the 30th day from the date of Notice of Termination re-issuance. In the event of a re-issuance of a Notice of Termination, the OTDA shall not be required to providing the Contractor further opportunities to cure or to submit a Corrective Action Plan(s). 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 OTDA deems that termination would be in the best interest of the OTDA provided that the OTDA shall give written notice to the Contractor not less than 60 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 OTDA agrees to pay the Contractor for contract work performed and reasonable and appropriate expenses incurred in good faith. OTDA 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 OTDA 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 OTDA to the Contractor.
- F. Should the State determine that Federal or State funds are unavailable, the OTDA may terminate all or any part of the Agreement immediately upon notice to the Contractor. Such notification will be in written format. The OTDA 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 OTDA.
- 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 OTDA may be liable. OTDA will not be obligated to pay the Contractor for lost and/or anticipated profits.
- H. If this Agreement is terminated for any reason, the OTDA shall have the right to award a new contract to a third party. In the event of termination for cause, the OTDA shall have the right to seek recovery of damages incurred by the OTDA and the reasonable costs incurred in reassigning the contract, subject to the limitations set forth in Article 23, Limitation of Liability, 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 OTDA 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 OTDA notice and an opportunity to appear and respond in an appropriate legal forum.
- J. If all or any part of this Agreement is terminated as provided for in this Agreement, the OTDA shall have the right to possession and use of any deliverables and/or purchased or leased equipment or software and rights pursuant to the terms of this Agreement, provided that (i) 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 and (ii) any unfinished deliverables or software are provided "as is" and Contractor shall have no liability as to such unfinished deliverables or software. 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 State of New York notice and an opportunity to appear and respond in an appropriate legal forum.
- K. The remedy set forth in this Article shall be in addition to any other remedy available to the State under this Agreement or under any other provisions of law.
- L. 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.

M. 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 18
Patent/Copyright Indemnification

- A. The Contractor, at its expense, will defend any third party claim or suit which may be brought against the State for the infringement of United States patents or copyrights arising from the Contractor's or State's use of any software, 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 OTDA 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 State 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 software, equipment, materials, or information mentioned above are likely to be or become the subject of a claim of infringement (i) Contractor may, with the OTDA's written consent, substitute other equally suitable software, equipment, materials, and information or (ii) at Contractor's option and expense, Contractor may obtain the right for the OTDA to continue the use of such software, equipment, materials, and information, or (iii) OTDA agrees to cease the use of such deliverable for which Contractor is unable to obtain the right to continue the use of such equipment, materials, and information and Contractor will provide OTDA with a refund for an appropriate portion of the fees paid with respect to such deliverable(s). In the event that an action at law or in equity is commenced against the State arising out of a claim that the State's use of the software, equipment, materials or information under this Agreement infringes on any patent, copyright, or other intellectual property right, and such action is forwarded by the State to the Contractor for defense and indemnification pursuant to this paragraph, the State 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 OTDA 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 State, 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 software programs, materials or information 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, software, materials or information in a manner other than in accordance with its specifications as provided by the Contractor and the license given to the State herein.

ARTICLE 19
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 20
Notification

1. All notices permitted or required hereunder shall be in writing and shall be transmitted either:
 - ✓ via certified or registered United States mail, return receipt requested;
 - ✓ by facsimile transmission;
 - ✓ by personal delivery;
 - ✓ by expedited delivery service; or
 - ✓ by e-mail.

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

State of New York Office of Temporary and Disability Assistance

Name:

Title:

67 North Pearl Street, Albany, NY 12243

Telephone Number:

Facsimile Number:

E-Mail Address:

Contractor Name

Contact Information

Telephone Number:

Facsimile Number:

E-Mail Address:

2. 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.
3. 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 21
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 OTDA in writing immediately. Should the Contractor engage any current or former OTDA 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 OTDA, in writing, immediately. Should the OTDA thereafter determine that such employment is inconsistent with State or Federal Law, the OTDA 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 22
Other Agency Use

- A. Upon request by any other 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 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 OTDA 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 Appendix A – Standard Clauses for New York State contracts.
- 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 OTDA 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 Appendix A – Standard Clauses for New York State contracts.

ARTICLE 23
Limitation of Liability

- A. The Contractor's liability under this Agreement for failure to provide adequate services or deliverables, regardless of whether such liability is asserted under a theory of contract breach, default, negligence, warranty, or otherwise, shall not exceed two times the value of the contract amount as indicated in the State Central Accounting System.

- B. 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 officers, employees, subcontractors, partners or agents.

- C. Notwithstanding the provisions of subdivision A of this Article, the Contractor shall remain liable to the State, without monetary limitation, for: (i) 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, partners or agents; or (ii) any suit, action, claim, damages or costs arising under or in connection to the title, patent and copyright actions by third parties pursuant to Article 18 of this Agreement.

ARTICLE 24
Warranty for Deliverables/Workmanship

- A. Contractor warrants and represents full ownership, clear title free of all liens, and/or that Contractor has obtained on behalf of OTDA perpetual license rights set forth herein to use the Product for the purposes stated in the RFP. Contractor shall indemnify OTDA for any loss, damages or actions arising from a breach of this warranty without limitation. OTDA may require Contractor to furnish appropriate written documentation establishing the above rights and interests as a condition of payment. OTDA's request or failure to request such documentation shall not relieve Contractor of liability under this warranty.

- B. Contractor warrants that the System will function as represented in its Proposal and the other documents as incorporated into this Agreement. The Contractor further warrants that all hardware and software procured hereunder, when installed, shall be free of defects in material or workmanship according to the Contractor's standard business practices and in accordance with the warranties expressly set forth in this Agreement.

- C. Contractor warrants and represents that all Products or deliverables specified and furnished by or through this Agreement meet the completion criteria set forth in the contract and any subsequent statement(s) of work, and that services will be provided in a workmanlike manner in accordance with industry standards.

- D. Contractor further warrants and represents that Products or deliverables specified and furnished by or through Contractor under the contract shall individually, and where specified by Contractor to perform as a system, be substantially uninterrupted and error-free in operation and guaranteed against faulty material and workmanship for 90 days beyond the life of the contract and for any extensions exercised under Article 1 or any other extensions of the contract as permissible. Defects in the Products or deliverables specified and furnished by or through Contractor shall be repaired or replaced by Contractor at no cost or expense to the OTDA.

- E. In addition to Contractor's warranty, the OTDA shall have the benefit of all manufacturers' standard commercial warranties for individual Project Deliverables. It shall be the Contractor's responsibility to insure that such warranties begin coterminously with the commencement of the contract. Any additional cost(s) for having the periods begin coterminously shall be borne by Contractor. During the contract, Contractor shall be responsible for placing and coordinating all manufacturers' warranty claims on behalf of OTDA. Such manufacturer's warranty coverage shall be supplemental

to, and not relieve the Contractor from, Contractor's warranty obligations during the life of the contract and any extensions exercised under Article 1 or any other extensions of the contract as permissible.

- F. Where the manufacturer's warranty term is longer than the life of the contract, Contractor shall notify the OTDA and pass through the manufacturer's warranty to OTDA at no additional charge. Contractor shall not be responsible for coordinating services under the manufacturer's warranty after expiration of the contract.

- G. The warranties expressly set forth in this agreement are in lieu of all other warranties, express or implied including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose. The above warranties do not apply to the extent the problem is caused by misuse, unauthorized modification, unsuitable physical environment, operation in other than the Specified Operating Environment, failure to follow required maintenance by the OTDA or failure caused by a product for which Contractor is not responsible.

ARTICLE 25
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.

APPENDIX A-1

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

December, 2011

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

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

required to be covered by the provisions of the Workers' Compensation Law.

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

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

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

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually

agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to

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

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

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

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

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

with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the

subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.

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

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

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

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

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

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

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

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

retained the documentation of these efforts to be provided upon request to the State;

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS.

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

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

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

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.

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

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

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

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

**Appendix B
(Standard State Contract)**

Affirmative Action Definitions

For the purpose of this AGREEMENT, the following definitions shall apply:

1. **Minority Business Enterprise:** Any business enterprise which is at least fifty-one percent owned by, or in the case of a publicly owned business, at least fifty-one percent of the stock is owned by citizens or permanent resident aliens who are Black, Hispanic, Asian and Pacific Islander, or American Indian or Alaskan Native, and such ownership interest is real, substantial and continuing. The minority and women-owned ownership must have and exercise the authority to independently control the business decisions of the entity.

2. **Women-owned Business Enterprise:** Any business enterprise which is at least fifty-one percent owned by, or in the case of publicly owned business, at least fifty-one percent of the stock of which is owned by citizens or permanent aliens who are women, and such ownership interest is real, substantial and continuing.

For the purpose of this contract, it is understood that the definition of protected class is:

Legally identified groups that are specifically protected by statute against employment discrimination. Protected class encompasses minorities, women, Vietnam Era Veterans, disabled persons and others by virtue of the law or court decisions interpreting the law.

Definitions of Specific Categories of Protected Class

Ethnic Categories:

Black: (Not of Hispanic origin) - a person having origins in any of the black racial groups of the original peoples of Africa.

Hispanic: a person of Mexican, Puerto Rican, Dominican, Cuban, Central or South American or either Indian or Hispanic origin, regardless of race.

Asian and/or Pacific Islander: a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands and Samoa.

Native American or Alaskan Native: a person having origins in any of the original peoples of North America, and who maintains cultural identification through affiliation or community recognition.

Disabled Person: any person who (a) has a physical or mental impairment that substantially limits one or more major life activities; (b) has a record of such impairments, or (c) is regarded as having such an impairment.

Vietnam Era Veterans: any person who was in active military service between January 1, 1963 and May 7, 1975.