

APPENDIX N

CONTRACT TERMS AND CONDITIONS

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The terms and conditions set forth in this APPENDIX N are made part of the Agreement between a CSA and the Contractor unless otherwise expressly stated in the CSA's State Appendix.

1. Document Incorporation

The Agreement consists of:

- a) The CSA's cover contract for the Agreement, i.e. the document preceding the signatures of the parties in execution;
- b) The RFP (including Exhibits, Appendices and Attachments thereto) and Questions and Answers; and
- c) The Contractor's Proposal.

In the event of any inconsistency in or conflict among the documents comprising the Agreement, such inconsistency or conflict shall be resolved by giving precedence to the documents in the following order:

- a) Amendments to the Agreement;
- b) The CSA's cover contract for the Agreement, i.e. the document preceding the signatures of the parties in execution;
- c) The CSA State Appendix;
- d) The RFP (including Exhibits, Appendices and Attachments thereto) and Questions and Answers; and
- e) The Contractor's Proposal, including clarification correspondence.

The document most recent in time in each category above shall take precedence over any conflicting document included in such category.

Note: The terms and conditions applicable to security, privacy, and confidentiality are found in the body of the RFP and in Appendix N, N-1 and State specific Appendices. The more stringent and comprehensive security, privacy or confidentiality standard set forth among such documents must be met by the Contractor. Any notifications or communications thereunder are to be made by the Contractor to the CSA impacted.

2. Notification

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 personal delivery;

- by expedited delivery service; or
- by e-mail.

Such notices shall be addressed to the address set forth in the CSA's Cover Contract or to such different addresses as the parties may from time-to-time designate.

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 delivery at the address and in the manner provided herein, or in the case of email, upon receipt.

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 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.

3. Governing Law

The parties agree that this Agreement shall be construed and interpreted in accordance with the laws governing the CSA. The Contractor shall be required to bring any legal proceeding against the CSA arising from this Agreement in the courts of the CSA.

4. Termination of the Agreement

a. Mutual Agreement All or any part of this Agreement may be terminated by mutual written agreement of the CSA and the Contractor.

b. For Cause For a material breach that remains uncured for more than 30 calendar days or other longer period as specified by written notice to the Contractor, the Contract may be terminated by CSA for cause. The CSA shall not be liable for any of Contractor's costs arising from the failure to perform or the termination, including without limitation costs incurred after the date of termination. Such termination shall be upon written notice to the Contractor. In such event, CSA may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

A material breach means a significant and/or repeated failure(s) to deliver a product or Service in accordance with the timetable, price or performance standards applicable thereto, or when a material term of the Contract is breached.

c. For Convenience This Contract may be terminated at any time by the CSA for convenience upon 60 calendar days or other longer period as specified by written notice, without penalty or other early termination charges due. If the Contract is terminated for convenience, then the CSA shall remain liable for all accrued but unpaid charges incurred through the date of the termination.

d. Mitigation of Costs The Contractor shall not undertake any additional or new contractual obligations on or after the receipt of notice of termination without the prior written approval of

CSA. On or after the receipt of notice of termination and during the termination notice period, the Contractor shall take all commercially reasonable and prudent actions to close out unnecessary outstanding, existing obligation(s) as economically as possible.

5. Performance Timeliness

The CSA and the Contractor acknowledge and agree that time is of the essence in the Contractor's performance hereunder unless otherwise agreed upon in writing.

6. Taxes

The CSA shall not be liable for the payment of any taxes resulting from this agreement however designated, levied, or imposed, unless the CSA would otherwise be liable for the payment of such taxes under the course of its normal business operations.

7. Legal Authority

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

8. Contractor Obligations

- a. The Contractor must use best efforts to develop, convert, implement, and operate the EBT System and Services as outlined in the RFP, the Contractor's Proposal, and this Agreement.
- b. The Contractor assumes sole and complete responsibility for the cost and timely accomplishment of all of its activities and duties required by this Agreement and will carry out those activities and duties in a competent and timely manner.
- c. The Contractor warrants that the Services provided using the equipment and software identified in its proposal, or required follow-on products (software and hardware), along with support for said Services and Products, will be available for the term of this Agreement.
- d. The Contractor agrees that no aspect of Contractor performance under this Agreement will be contingent upon State personnel or the availability of State resources with the exception of:
 - i. Any actions of the Contractor specifically identified in this Agreement that require CSA acquisition, approval, policy decisions, or policy approvals. Such actions by a CSA will not be unreasonably delayed, and except as stated specifically herein, the Contractor shall not be liable for any damages suffered as a result of delays caused by a CSA or other Federal, State or local agencies.
 - ii. The normal cooperation which can be expected in such a contractual relationship.
 - iii. All actions required to be performed by the CSA in the authorization and approval of benefits as contemplated by this Agreement.

- iv. Exceptions stated in this Agreement.
- v. Duties, tasks, and obligations subsequently agreed to by the parties to be performed by the CSA.
- e. The Contractor recognizes and agrees that any and all work performed outside the scope of this Agreement or without the consent of a CSA shall not be subject to charge by the Contractor.
- f. The Contractor will cooperate fully with any other contractors who may be engaged by the CSA to carry out responsibilities associated with this Agreement.
- g. The Contractor will provide authorized representatives of the State or Federal government, with appropriate notice by the CSA to the Contractor, access at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement. All such inspections shall be in conformity with the Contractor's reasonable security procedures.
- h. The Contractor will cooperate as reasonably required with the NCS Regional Management Council (RMC) including attendance at NCS RMC meetings.
- i. The Contractor will provide all necessary travel expenses for two state personnel per CSA during system acceptance testing. Such travel must be compliant with the CSA's travel policies and procedures.

9. Notification of Pending Issues

The Contractor must provide immediate oral and written electronic notification to the appropriate CSA(s) of any material incident, issue, or problem including, but not limited to, system outages, customer service delays, non-compliance with performance standards or deliverable due dates. Subsequent thereto immediate and open communication between the Contractor and the individual CSA personnel shall occur to allow for maximum CSA involvement in the planning, execution, and evaluation of any action(s) taken to cure such incident, issue or problem. Contractor shall provide the CSA, within forty-eight hours from such notification, specific written information documenting the nature of the incident, issue or problem, and the necessary actions/steps to resolve/correct such incident, issue or problem.

10. Notification of Operational Disruption

The Contractor must submit adequate advance written notification to the appropriate CSA(s) of any planned changes that may result in any potential operational disruption to the services provided under this Agreement. Operational disruptions may include, but are not limited to, the EBT System (host processing, Network, settlement, etc.), the EBT Gateway, Retailer Management, Cardholder and/or Retailer Customer Service. The required notification must include a project plan that outlines the activities, timelines, and dependencies that ensure that any proposed changes will not jeopardize or impact the operations or services of the NCS or CSA. Such project plan must have approval by the CSA prior to implementation.

11. Contracting State Agency Obligations

- a) The CSA shall ensure elements of the EBT System to be provided by the CSA are delivered in a reasonable and timely manner.
- b) The CSA shall ensure that adequate funds to meet non-federally reimbursed obligations will be available for daily settlement.
- c) Any CSA that uses a separate card production system must ensure card production services are performed in a timely manner and comply with the minimum standards as set forth in the EBT Quest Operating Rules. If the Contractor incurs expenses as a result of defects in the card system or other systems that affect the delivery of EBT Services by the Contractor, the Contractor is entitled to negotiate in good faith with the CSA for reimbursement of expenses incurred or expense to mitigate the problems.

12. Contractor Sole Responsibility

The Contractor shall be solely responsible for the services under this Agreement. Full responsibility for the delivery of services provided by another firm which is a subcontractor or vendor to the Contractor must be assumed by the Contractor.

13. Independent Contractor

The Contractor is an independent contractor and the Contractor, its agents, officers and employees, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees of the State or the CSA.

14. Most Favored Nation

The prices and warranties granted by the Contractor herein are comparable to or better than the equivalent terms being offered by the Contractor to other State government customers using similar scope and volume of services under like terms and conditions. If the Contractor, during the term of this Agreement, enters into agreements with any other government customer(s) providing better prices, at the option of each CSA, this Agreement shall thereupon be deemed amended to provide the same to the CSA.

15. License/Ownership/Title of Products Furnished

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 CSAs pursuant to the Agreement, and Contractor shall be solely liable for the full cost of acquisition associated therewith. Contractor shall provide the CSA 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 a CSA. The cost of obtaining such rights for continued perpetual use of such product(s) by a CSA, upon project completion, shall be deemed to have been included by Contractor in its proposal. Such products include, without limitation, all hardware, commodities, custom programming or third-party software, training modules, printed materials, source codes, or any other products or services furnished pursuant to the Agreement. The Contractor fully indemnifies each CSA for any loss, damages or actions arising from a breach of this ownership warranty.

16. Title of Proprietary Information Furnished for Evaluation Purposes

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

17. Ownership/Title to Custom Products/Programming Deliverables

- a. It is anticipated that Deliverables under this Contract may include “existing” and/or “custom” materials.
- b. “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, including components transferred under a perpetual license (hereinafter “Existing Material(s)”).
- c. “Custom Materials” include, without limitation, such things as programs or programming tools, source code, object code, user or training manuals, programming, reports, drawings and any other materials, preliminary, final and otherwise, created, prepared, written or developed, whether jointly or individually, for the CSA (hereinafter “Custom Material(s)”) under this Agreement.
- d. Title to all Existing Material(s), whether embedded in or operating in conjunction with Custom Materials, shall remain with Contractor or such Third Party, who shall have all right, title and interest (including ownership or copyrights). Contractor will deliver as directed Existing Material(s) to the CSA and hereby grants an irrevocable, non-exclusive, worldwide, paid-up license to use, execute, copy, reproduce, display, perform, and distribute Existing Materials. The CSA agrees to reproduce the copyright notice and any other legend of ownership on any copies made under the licenses granted under this paragraph.
- e. Title to Custom Material(s), excluding Existing Materials, shall be the sole and exclusive property of the CSA, who shall have all right, title and interest, including ownership and copyrights, and the rights to use, copy, modify and prepare derivative works of the Custom Materials. The CSA retains the right to sell Custom Materials, or to license them on an exclusive or non-exclusive basis. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Materials are protected against unauthorized copying, reproduction and marketing by or through the Contractor.
- f. Nothing herein shall preclude the Contractor from using the related or underlying general knowledge, skills and experience developed in the course of providing the services under this Agreement in the course of Contractor’s business. The above provisions shall not preclude the Contractor from developing materials, including software, which are similar to that furnished the CSA in the course of providing services under this Agreement.

- g. Notwithstanding the provisions set forth above, the parties agree that the United States Department of Health and Human Services and the United States Department of Agriculture shall be granted a royalty-free, non-exclusive and irrevocable license to produce, publish or otherwise use documents and software created under this Agreement, and to authorize others to do so for government purposes, to the extent that the services which resulted in the production of such documents and software are Federally funded. The grant excludes the proprietary products, documentation, materials and information (and derivative works thereto) of Contractor, Contractor's sub-contractors and Third Party Product Providers.

This Article will survive termination or cancellation of this Agreement.

18. Interpretations and Disputes

A. Informal Dispute Resolution Process:

In the event there is a dispute, CSA and Contractor agree to exercise best efforts to resolve the dispute as soon as possible. The Contractor and CSA shall, without delay, continue to perform their respective obligations under the Contract.

In the event CSA is dissatisfied with the Contractor's product(s) or services provided under the Contract, then CSA shall notify the Contractor of such in writing pursuant to the terms of the Contract. In the event the Contractor has any disputes with a CSA, the Contractor shall notify such CSA in writing. If either party notifies the other of a dispute, then the other party shall make good faith efforts to solve the problem or settle the dispute amicably, including meeting with the party's representatives to attempt to diligently reach a satisfactory result through negotiation. Notwithstanding the foregoing, this section shall not be construed to prevent either party from seeking and obtaining temporary equitable remedies, including injunctive relief.

B. Formal Dispute Process:

A Formal Dispute must be filed by mail and emailed to the person specified in the CSA's Cover Contract, identified to receive receipt of notifications. The notification must include a detailed statement of the legal and/or factual grounds for the Formal Dispute, relevant documents, a statement as to the form of relief requested, and any other pertinent information relating to the dispute. A Formal Dispute must be filed within 20 business days after the Contractor and CSA failed to reach resolution through the Informal Dispute Resolution Process.

The relevant CSA will consider all information relevant to the Formal Dispute and may require the Contractor to meet or participate in a conference call with the CSA to discuss the Formal Dispute when, in the CSA's sole judgment, circumstances so warrant. Subsequent to such fact gathering, the CSA shall send a Formal Dispute Determination to the Contractor.

C. Appeal to General Counsel

Should the Contractor be dissatisfied with the relevant CSA's Formal Dispute Determination, a written appeal may be filed with the appropriate CSA's General Counsel, by regular mail.

Written notice of appeal of a Formal Dispute Determination must be received at the CSA's notification contact, designated in the CSA Cover Contract no more than 10 business days after the date the Formal Dispute Determination is received by the Contractor.

The relevant CSA's General Counsel shall review and make a Final Determination on all appeals or may designate a person or persons to act on his/her behalf. The Final Determination on the appeal shall be issued within 20 business days of receipt of the appeal.

An appeal of the Formal Dispute Determination of the CSA shall not include new facts and information unless requested in writing by the General Counsel. The Final Determination of the General Counsel shall be the final and conclusive CSA determination.

19. Indemnification for Damages

In performance of its duties pursuant to this Agreement, Contractor shall fully indemnify and hold harmless the CSA from suits, actions, damages and costs of every name and description relating to personal injury, damage to real or personal tangible or intangible property, or any other claim for direct damages arising as a result of negligent acts or omissions or willful misconduct of Contractor, its officers, employees, subcontractors, partners or agents.

The CSA may, in addition to other remedies available to them at law, retain such monies from amounts due Contractor, or may proceed against any letter of credit or performance and payment bond under the Contract award, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them; provided, however, that the Contractor shall not indemnify to the extent that any claim, loss or damage arising hereunder is caused by the negligent act or failure to act of the CSA.

As a condition to the foregoing indemnity obligations under this Article, the State shall provide Contractors with prompt notice of any claims for which indemnification may be sought hereunder, shall reasonably cooperate with Contractor in connection with any such claim, and shall be responsible for its compliance with any laws and regulations associated with any deliverables supplied by Contractor hereunder.

20. Record Retention

The Contractor during the course of this Agreement and for a minimum period of six years following its termination, or final payment hereunder, whichever occurs later, agrees to maintain and make available to duly authorized representatives of the CSA, the individual states, and the United States Government all records or documentation arising hereunder or relating hereto.

Records involving matters in litigation or audit must be kept for a period of not less than three 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 CSA, provided that the storage procedures are accepted by the CSA as reliable and are supported by an adequate retrieval system.

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

21. Disclosure and Audit of Agreement Records

The responsible NCS State agencies, United States Department of Agriculture, Food and Nutrition Service (USDA-FNS), or any other governmental agency authorized by law, reserve the right to inspect, review, investigate or audit all parts of any services and/or facilities provided herein by the Contractor or any subcontractors or vendors engaged by the Contractor in performing EBT services. In such capacity, the Northeast Coalition of States, or their representative(s), must have access to facilities, records, reports, personnel and all other aspects of the EBT System furnished by the Contractor or any subcontractors or vendors.

All records and information obtained by the CSA pursuant to the provisions of this Agreement, whether by audit or otherwise, shall be usable by the State solely for the purpose of performing this Agreement in any manner, at its sole discretion, as it deems appropriate and the Contractor shall have no right of confidentiality or proprietary interest in such use of such records or information.

Contractor hereby agrees that all documents furnished by Contractor shall be subject to public disclosure by the CSA in the normal course of business in accordance with the requirements of the CSA's applicable State law, except for proprietary information the disclosure of which would cause substantial injury to the competitive position of Contractor enterprise. Information relating to Contractor price submissions, including commercial, book or list pricing, applicable discounts or final bid price and like information, shall not be entitled to confidentiality protection whether or not submitted or designated as proprietary to Contractor. Contractor may otherwise preserve proprietary rights as to confidential or business process information in accordance with procedures established under applicable State laws, provided that (i) Contractor shall inform the CSA prior to or with submission of its bid, in writing, that such records are being furnished, are proprietary and are not to be disclosed; and (ii) said records shall be sufficiently identified; and (iii) Contractor shall state the reasons with specificity why the information should be exempted from disclosure; and (iv) designation of said records as exempt from disclosure is reasonable and accepted by CSA.

The Contractor shall promptly notify the CSA of any request by anyone for access to any records maintained pursuant to this Agreement. Access by Federal or State bank regulatory agents, or Contractor's regular outside auditors to Contractor's financial records, pursuant to regularly scheduled or routine audits or inspection of Contractor, shall not require notification to the CSA provided that rights of confidentiality or proprietary interests are preserved.

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

22. Patent/Copyright Indemnification

- a. The Contractor, at its expense, will defend any claim or suit which may be brought against the CSA for the infringement of United States patents or copyrights arising from the Contractor's or CSA's use of any equipment, materials, or information prepared or developed by the Contractor in connection with performance of this Agreement and in any suit, the Contractor, at its expense, will satisfy any final judgment for such infringement. The CSA will give the Contractor written notice of such claim or suit and full right and opportunity to conduct the defense thereof, together with full information and all reasonable cooperation.
- b. If principles of governmental or public law, regulations or executive orders are involved, the CSA may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of Contractor without Contractor's written consent.
- c. If in the Contractor's opinion the equipment, materials, or information mentioned above are likely to be or become the subject of a claim of infringement of a Contractor's obligation to satisfy any final award, Contractor may, with the CSA's written consent, substitute other equally suitable equipment, materials, and information or at Contractor's option and expense, obtain the right for the CSA to continue the use of such equipment, materials, and information. In the event that an action at law or in equity is commenced against the CSA arising out of a claim that the CSA's use of the software, equipment, materials or information under this Agreement infringes on any patent, copyright, or proprietary right, and such action is forwarded by the CSA to the Contractor for defense and indemnification pursuant to this paragraph, the CSA shall copy all pleadings and documents forwarded to the Contractor together with the forwarding correspondence to the relevant CSA's General Counsel's Office together with a copy of this Agreement. If upon receipt of such request for defense, or at any time thereafter, the Contractor is of the opinion that the allegations in such action, in whole or in part, are not covered by the indemnification set forth herein, the Contractor shall immediately notify the CSA and the relevant CSA's General Counsel's Office 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 CSA and secure a continuance to permit the CSA to appear and defend its interests in cooperation with the Contractor as is appropriate including any jurisdictional defenses which the State shall have.

23. Conflict of Interest

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

24. Limitation of Liability

Contractor shall be jointly and severally responsible for the actions of its agents, employees, partners, or sub-contractors, including for losses and damages arising from, but not limited to: (i) providing defective or inadequate specifications; (ii) defective or inadequate performance; (iii) connectivity issues within Contractor's control; (iv) defective or inadequate recommendations inducing detrimental reliance by CSA; or (v) defective or inadequate maintenance and warranty service. Contractor's total liability for direct damages under the Agreement shall not exceed the value of the Contract entered into with each NCS. For New York State, this value is indicated in the New York State Financial System. The Contractor remains liable, without monetary limitation, for direct damages for personal injury, death, or damage to real property or tangible personal property attributable to the negligence or other tort of the Contractor, its officers, employees, subcontractors, partners, or agents.

Where express loss liabilities set forth in the Agreement provide for a higher loss limitation liability than as set forth in this Appendix, or where such express provisions impose Contractor liability "without limitation," such express warranties, obligations and Indemnifications shall supersede the loss limitation cap contained in this Section.

25. Warranties

- a) **Understands Obligations** Contractor warrants that it has carefully reviewed the needs of the CSA as described in the RFP and its appendices and attachments and as otherwise communicated in writing by the CSA to the Contractor, and that it has familiarized itself with the RFP, the Contractor's proposal, and the other documents incorporated into the Agreement. The Contractor agrees that it will perform its obligations hereunder in accordance with all applicable laws, rules, regulations, executive orders, and official policies now or hereafter in effect.
- b) **Compliance** Contractor warrants and affirms that the terms of this Agreement do not violate any contracts or agreements to which it is a party and that its other contractual obligations will not adversely influence its capabilities to perform under this Agreement.
- c) **Product Performance** Contractor hereby warrants and represents that the products and services acquired by the CSA under this Agreement conform to the manufacturer's specifications, performance standards and documentation and that the documentation fully describes the proper procedure for using such products and services.
- d) **Title and Ownership** Contractor warrants and represents that it has (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver specified license rights to products and services acquired by the CSA under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor shall indemnify the CSA and hold the CSA harmless from any damages and liabilities (including reasonable attorneys' fees and costs) arising from any breach of Contractor's warranties as set forth herein. Contractor shall provide the CSA with appropriate documentation indicating the vesting of such rights in Contractor, and/or the right to transfer such rights, as requested by the CSA.
- e) **Product Warranty** Contractor further warrants and represents that products, components or parts specified and furnished by or through Contractor, whether specified and furnished

individually or as a system, shall be substantially free from defects in material and workmanship and will conform to all requirements of the Contract during the Contract Term.

- f) **Virus Warranty** Contractor represents and warrants that any product acquired under the Contract by the CSA does not contain any known computer viruses. Contractor is not responsible for viruses introduced at the CSA's Site.
- g) **Qualification Warranty** Contractor warrants that it and any subcontractors it utilizes in the performance of the services is qualified and licensed to do business in each of the CSA States.
- h) **Administration Warranty** Contractor warrants that it shall maintain an adequate administrative organizational structure sufficient to discharge its contractual responsibilities. Contractor shall provide the appropriate CSA with advanced, written notification of all reductions in staff below the levels found in the Contractor's Proposal.
- i) **Workmanship Warranty** Contractor warrants that the services acquired under this Agreement will be provided in a professional and workmanlike manner in accordance with the applicable industry standards, if any.
- j) **Survival of Warranties** All warranties contained in this Agreement shall survive the termination of this Agreement.
- k) **Additional Warranties** Where Contractor, generally offers additional or more advantageous warranties than those set forth herein, Contractor shall offer or pass through any such warranties to the CSA.
- l) **Implied Warranties** The warranties set forth herein are in addition to all other warranties, express or implied, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose.
- m) **Interoperability** The Contractor warrants that:
 - i. The system to be used for delivery of core services, functionality, and associated technology as required and described in the RFP must be comparable among all CSAs.
 - ii. New functionality paid for by federal or state funds will be transferable between systems and between states, as applicable, and as required by said systems and/or states, without additional charge for development for such transfer. However, additional costs may apply and be charged to the NCS states for testing, installation and other related work effort specific to such transfer in accordance with a Change Order.
 - iii. New functionality will comply with the provisions and requirements of the Quest Operating Rules as adopted and amended by the Electronic Benefits and Services (EBS) Council and as approved by the NCS Regional Management Council, the CSA, the United States Department of Agriculture Food and Nutrition Services (FNS) and the United States Health and Human Services Administration for Children and Families.

26. Force Majeure

A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled and is not due to the negligence or willful misconduct of the affected party. Force majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, terrorism, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or the CSA in the performance of the Contract where non-performance, by exercise of reasonable diligence, cannot be prevented.

In the instance of a Force Majeure event, the affected party shall provide the other party with written notice of any force majeure occurrence as soon as the delay is known and provide the other party with a written contingency plan to address the force majeure occurrence. Such plan should include, but not be limited to, specificity on quantities of materials, tooling, people, and other resources that will need to be redirected to another facility and the process of redirecting them. Furthermore, the affected party shall use all commercially reasonable efforts to resume proper performance within an appropriate period of time. Notwithstanding the foregoing, if the force majeure condition continues beyond 30 calendar days, the parties to the Agreement shall jointly decide on an appropriate course of action that will permit fulfillment of the parties' objectives under the Agreement.

27. Contract Interpretation

Each of the parties hereto has jointly participated in the negotiation and drafting of this Agreement. In the event an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by each of the parties hereto and no presumptions or burdens of proof shall arise favoring any party by virtue of the authorship of any provisions of this Agreement.

28. Severability

Should any provision of the Agreement be declared or found to be illegal, unenforceable, ineffective or void, then each party shall be relieved of any obligation arising from such provision; the balance of this Agreement, if capable of performance, shall remain in full force and effect.

29. Waiver

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.

30. Extension of Use

Any Contract resulting from this RFP may be extended to additional States, United States Territories (e.g., the U.S. Virgin Islands) or other governmental jurisdictions upon written authorization by the NCS and the Contractor. Political subdivisions of such governmental entities may also participate in any resultant Contract upon such approval. The CSA reserves the right to negotiate additional discounts based on any increased volume generated by such use.

31. Federal Procurement Clauses

Equal Employment Opportunity

The Contractor understands and agrees to comply, when applicable, with the equal opportunity clause provided under 41 CFR 60- 1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." (2 CFR 200, Subpart F, Appendix II).

Clean Air and Federal Water Pollution Control Act

As applicable, Contractor understands and agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251- 1387). Contractor shall report violations to the NCS and each CSA to then be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). (2 CFR 200, Subpart F, Appendix II).

Anti-Lobbying Act

As a sub-client of the NCS and the CSAs, the Contractor understands and agrees to comply with the Federal requirements for certification and disclosure of Section 1352, Title 31 of the U.S. Code and implemented at 2 CFR 200, Subpart F, Appendix II. By signing this contract, the Contractor certifies that it will not use federally appropriated funds for lobbying the Executive or Legislative branches of the Federal government in connection with a specific contract, grant, or loan funds.

The Contractor understands and agrees 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 Contractor shall comply with any requirements to provide the NCS and/or any CSA with Federal lobbying reports to comply with this Anti-Lobbying Act. The Contractor may be liable for any civil penalty imposed upon the NCS and any CSA for failing to make a required report.

Americans with Disabilities Act

28 CFR Part 35, Title II, Subtitle A prohibits discrimination on the basis of disability in all services, programs, and activities provided to the public and State and local governments, except public transportation services.

The Contractor shall ensure that the Services provided comply with the Americans for Disabilities Act (ADA), the Rehabilitation Act of 1973, as amended, State law, and implementing regulations.

Drug-Free Workplace Statement

The Contractor shall comply with 41 U.S. Code § 8103, Drug-free workplace requirements in the provision of the Services. By signing this contract, the Contractor certifies that it will provide drug-free workplaces for its employees.

Royalty Free Rights to Use Software or Documentation Developed

All documentation produced as part of the Contract will become the exclusive property of the NCS and each of the CSA. NCS and each of the CSA reserve a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use such documentation and to authorize others to do so.

Contractor shall comply with 2 CFR 200.315 regarding the NCS and each CSA's rights to the intangible property acquire under this Contract.

Debarment and Suspension

The Contractor certifies that the Contractor and its principals are not listed on the government wide exclusions in the System for Award Management (SAM). The Contractor by signing this contract further certifies that the Contractor and its principals are not suspended or debarred, as specified by the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension". The Contractor also certifies by signing this contract that the Contractor and its principals are not ineligible under statutory or regulatory authority other than Executive Order 12549 pursuant to 2 CFR 200, Subpart F, Appendix II and 7 CFR Part 3017. Contractor shall complete and return in pursuit of such certification any appropriate form required by the NCS and/or a CSA (see Federal Executive Order 12549 and 7 CFR Part 3017).

Other federal requirements

The Contractor agrees to comply with any federal requirements such as, among others not listed above, the Copeland "Anti-Kickback Act" (18 USC 874), and Section 306 of the Federal Clean Water Act and to provide to the NCS and/or any CSA any requested documents supporting such compliance, including if necessary creating such supporting documentation.

The Contractor shall include in all sub-awards documents at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) the language of this Section 31 Federal Procurement Clauses and shall ensure that all sub-clients shall certify and disclose as required by any federal requirements.

32. Entire Agreement

This Agreement 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.