



**STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE  
Office of Budget & Management Analysis  
Bureau of Fiscal Services  
Building 9, Room 234  
W.A. Harriman Campus  
Albany, NY 12227**

Patricia Mitchell, Chief Financial Officer  
Eric Mostert, Assistant Director, Budget & Accounting Services  
Catherine Golden, Assistant Director, Procurement Services

January 13, 2010

Dear Prospective Bidder,

The New York State Department of Taxation and Finance (DTF) together with the Office of General Services (OGS) is soliciting proposals from qualified vendors to provide services associated with the issuance of Request for Proposal (RFP) #10-02 for PIT Refund Controlled Disbursement, Direct Deposit and Statewide Debit Card Services. The RFP is being issued for two separate modules that will result in the award of two separate contracts. Qualifications and mandatory requirements are outlined in the RFP for this procurement.

The RFP 10-02 is posted on the Department's web site at: <http://www.nystax.gov/procurement>. If you are unable to obtain a copy of the RFP from our website, please e-mail [bfs\\_contracts@tax.state.ny.us](mailto:bfs_contracts@tax.state.ny.us) or call (518) 457-0954 to request a copy.

Vendors should be advised of new legislation for Procurement Lobbying on ALL Procurement Contracts effective January 1, 2006. Details of guidelines, regulations, forms and the designated contact(s) are provided on the Department's web site at: <http://www.nystax.gov/procurement>. Additional information can be found at the New York State Office of General Services website at: <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>.

Interested bidders must meet the minimum qualifications described in Section IV, Qualifying Requirements. All questions regarding this RFP must be submitted via (1) e-mail (preferred) to [bfs\\_contracts@tax.state.ny.us](mailto:bfs_contracts@tax.state.ny.us); (2) fax to (518) 435-8413; or (3) mail to the above address. All questions must be received by January 21, 2010, 4:00 p.m. EST. Please reference the Module of the RFP, along with the relevant page and section of the RFP as well as the RFP number, 10-02.

All proposals must be received no later than March 22, 2010 4:00 p.m. EST.

Sincerely,

A handwritten signature in cursive script that reads "Catherine Golden".

Catherine Golden  
Assistant Director

# STATE OF NEW YORK



Department of Taxation and Finance  
and  
Office of General Services

## REQUEST FOR PROPOSAL

Personal Income Tax Refund Controlled  
Disbursement, Direct Deposit  
and  
Statewide Debit Card Services



January 13, 2010

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## PREFACE

### Bid Administration

Please refer to Section III, Administrative Conditions and Proposal Response Requirements, of this RFP for information concerning the procurement process. Additional questions or concerns regarding this RFP should be addressed to (e-mail preferred):

Catherine Golden, Assistant Director  
Procurement Services Unit  
NYS Department of Taxation and Finance  
Building 9, Room 234  
Albany, NY 12227  
(518) 457-0954  
(518) 435-8413 (fax)  
[bfs\\_contracts@tax.state.ny.us](mailto:bfs_contracts@tax.state.ny.us)

### Designated Contacts

All inquiries concerning this solicitation should be addressed to the following designated contacts:

Catherine Golden	(518) 457-0954	<a href="mailto:bfs_contracts@tax.state.ny.us">bfs_contracts@tax.state.ny.us</a>
Karen Brino	(518) 457-0954	<a href="mailto:bfs_contracts@tax.state.ny.us">bfs_contracts@tax.state.ny.us</a>
Dorothy Lechmanski	(518) 485-7875	<a href="mailto:bfs_contracts@tax.state.ny.us">bfs_contracts@tax.state.ny.us</a>

**All Vendor Questions for Module 1 and Module 2 due by the date specified in the Key Events Timetable, must clearly identify the section number, page number and Module of the RFP and are to be submitted to:**

[bfs\\_contracts@tax.state.ny.us](mailto:bfs_contracts@tax.state.ny.us)

Contacting individuals other than the designated contacts listed above may result in the disqualification of the bidder's proposal - please refer to the Procurement Lobbying Act (Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005) and the Department guidelines posted on the Department's procurement website at: <http://www.nystax.gov/procurement>. Additional information can be found on the Office of General Services web site at: <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

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**Private Delivery Services:**

Mail deliveries requiring a signature of receipt should be addressed to the Department's campus address, but the delivery service should be instructed to deliver the bid documents to the following address:

90 Cohoes Avenue  
Green Island, New York 12183.

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**Key Events Timetable**

Issuance of RFP	1/13/2010
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Deadline for filing the “Offerer Affirmation and Understanding of, and Compliance with, Procurement Lobbying Guidelines” (Appendix D-6, see also Section III C6)	1/21/2010
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Deadline for Submission of Questions	1/21/2010 (by 4:00 PM EST)
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Department Response to Bidder Questions	2/02/2010
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Deadline for Submission of Follow-up Questions	2/9/2010
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Department Response to Bidder Follow-up Questions	2/16/2010
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Deadline for Filing the “Notification of Intent to Bid” (Appendix D-1)	2/22/2010 (by 4:00 PM EST)
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Proposals Due	3/22/2010 (by 4:00 PM EST)
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Notification of Intent to Award	5/17/2010
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Deadline for Contract Signature	6/16/2010
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Department User Acceptance Testing Begins	9/3/2010
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Certification Date	12/3/2010
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Implementation Date	1/3/2011

## **SECTION I - INTRODUCTION**

### **A. Purpose**

This Request for Proposal (RFP) is being issued for two (2) separate modules that will result in the award of two (2) separate contracts. The New York State Department of Taxation and Finance (the Department or DTF) is seeking an agency specific contract for the issuance and payment of Personal Income Tax (PIT) refunds, under Module 1. The New York State Office of General Services (OGS) is seeking a statewide agreement for use by all agencies and other authorized users for debit card services under Module 2. Bidders are invited to submit bids for Module 1, Module 2 or both Modules. The New York State Department of Taxation and Finance will serve as the anchor agency for this RFP and as such will receive all bidder submissions. Bidder questions regarding this proposal should be directed to the designated contacts identified in the Preface.

**Module 1:** The New York State Department of Taxation and Finance (the Department) is requesting proposals from state or federally chartered commercial banks with at least one branch in New York State or document processors subcontracting with such a commercial bank to provide banking services associated with the issuance and payment of Personal Income Tax (PIT) refunds (the Program) through paper drafts and direct deposits.

**Module 2:** The New York State Office of General Services (OGS) is requesting proposals from state or federally chartered commercial banks with at least one branch in New York State or document processors subcontracting with such a commercial bank to provide banking services associated with debit card services. These services may include single use cards, reloadable debit cards for disbursement of funds from an Authorized User to an individual(s) or entity, or stored value cards for instant on-site payments to individuals or entities and any equipment that may be necessary to activate these cards. Other examples where debit cards may be necessary are for payment to government employees (e.g. payroll, travel reimbursement, retirement benefits, etc.); this listing is not all-inclusive.

### **B. Program Overview**

**Module 1:** The Department issues PIT refunds each year to taxpayers that are overpaid on their PIT liabilities. Currently, the refunds may be issued as paper drafts or as an ACH direct deposit. (See tables in Exhibit A - volumes.) However, the Department is seeking to begin issuing Debit Cards, as of the 2011 processing year (January 2011). Two reasons cause the Department to move in this direction – the cost of issuing and processing paper checks and the need to provide alternative refund access to persons without bank accounts. The Department intends to offer the Debit Card option in lieu of check processing to minimize the number of paper checks issued annually.

In 2008, the Department issued approximately 7.2 million PIT refunds, valued at \$7.5 billion. This included approximately 4 million paper drafts and approximately 3.2 million ACH direct deposits. The

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issuance pattern of refunds is based upon an April 15<sup>th</sup> filing date and the Department’s need to issue refunds within 45 days of the due date to minimize refunds paid with interest.

The Department’s direct deposit program has shown a steady increase over the last three years:

	Direct Deposits Initiated	Percentage of all Refunds Issued
2006	2,455,130	37%
2007	2,833,436	40%
2008	3,201,993	44%

The Department anticipates the volume of checks to decline significantly due to the intent of the Department to maximize use of the direct deposit and debit card services.

Miscellaneous Module 1 Services

The following are 2008 processing year annual volumes for miscellaneous services related to paper drafts:

<u>Item</u>	<u>Volume</u>
Online Cancel Payment Requests	23,721
Forgery Claims	2,502
Exchange Account	363

**Module 2:** OGS is seeking debit card services for the following areas:

- Single load Debit Card
- Reloadable Debit Card
- Stored Value Debit Card

Similar to DTF, various agencies make payments to fund recipients utilizing direct deposit or paper checks as one-time or recurring payments. While it is envisioned that many agencies will implement Module 2 debit card services over the life of the contract, this will not occur right away and therefore the contract is designed to allow contract user agencies to implement as they become ready. In addition to the PIT transactions detailed above, following are examples of some of the other payments made by various agencies to fund recipients: juror, worker compensation, corrections release, unemployment, and certain payments to families and children. Some of these transactions are envisioned as a “pay as you go” provided to recipients one time after activation by the agency through



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equipment/terminal at agency location(s). Usage of all types of debit cards under the statewide agreement is anticipated to increase over the life of the contract.

The following numbers are provided simply as an example and should not be considered an all inclusive listing or firm commitment.

Court - Juror

FY 2008 –Per Diem juror payments totaled ~\$2 million.

~272,000 checks to Jurors.

160,700 were checks for one day of service in the amount of \$40.00. 65,800 two-day checks issued in the amount of \$80.00.

45,000 checks for longer periods of time and other dollar amounts

Occurs daily

Worker Compensation

Various classifications of workers' compensation claimants

Annual Number of payments = +/- **250,000**

90% are recurring payments

90% of the recurring payments are \$300 to \$400

Value of payments lowest to highest: \$20 TO \$1,600

Bi Weekly

Corrections Release

Work Release – 3000 annually (currently cash)

System Release – 28,000 (currently as check)

Most = \$60-\$80

Value of payments lowest to highest \$40 TO \$10,000+

Occurs daily

While the following already have existing contracts for debit services, the possibility exists for agencies to utilize the statewide debit card contract once the agency specific contracts expire. The numbers provided are estimates and are not commitments.

Office of Temporary Disability Assistance

Non-TANF (non temporary assistance) - child support

Annual Number of payments = +/- **250,000**

4.5 million transactions totaling more than ½ billion dollars

Recurring

Bi weekly

**Any requirements in this RFP, not clearly denoted as applying to Module 1 or Module 2 will be applicable to both Module 1 and Module 2.**

### **C. Procurement Objectives**

Module 1: The objective of this RFP for Module 1 is to procure services which:

- Achieve certification and implementation deadlines.
- Meet the stated requirements.
- Ensure accurate and timely processing of refunds.
- Allow for growth and changes to the Program.
- Provide system and operational security.
- Provide fail safe, disaster recovery and associated business continuity services.

The bidder awarded this contract (“Contractor”) must achieve the required accuracy and timeliness performance standards for the processing of refunds. Section II - Performance Standards, Liquidated Damages and Reimbursements identifies the standards for the Program that the successful Contractor must achieve to meet their contractual obligation. The bidder must also provide a comprehensive implementation plan which satisfies the Program Development and Implementation Requirements in Sections VII and VIII. The bidder must demonstrate the ability to meet deadlines and to produce deliverables in a timely manner and must cooperate with the Department during the certification process.

The bidder must demonstrate the ability and resources to respond rapidly and in a manner to change systems and/or operations due to legislative mandate, administrative directive, program enhancement, or changes in taxpayer behavior. Consistent with the Department’s Strategic Plan (available at <http://www.tax.state.ny.us/nyshome/aboutus.htm>), the Department may request that the successful bidder provide Program enhancement services. Depending on the nature of the Program enhancement, the Department will work with the successful bidder to evaluate the cost-benefit of implementing these changes. However, the Department is under no obligation to do so through the successful bidder, and reserves the right to develop and implement program enhancements internally or by entering into agreements with other third party service providers. The successful bidder must be willing to work in good faith with the Department and any other involved party or parties to develop and/or implement the requested program enhancement services.

The bidder must demonstrate that the processing facility (ies) and system(s) are secure, and that confidential material and information will be safeguarded. Disaster preparedness and disaster recovery plans must exist and be operational to ensure minimal disruption to the Program(s) in the event of such occurrences. Section VII details the disaster recovery/business continuity and fail-safe requirements.

Finally, the Department requires the successful bidder to meet the requirements of this RFP regardless of other present or future business commitments.

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Module 2: The objective of this RFP for Module 2 is to procure services which:

- Meet the stated requirements.
- Ensure accurate and timely debit card services
- Allow for growth and changes to the Program.
- Provide system and operational security.
- Provide fail safe, disaster recovery and associated business continuity services.

The bidder awarded this contract must have the ability to provide services to various agencies and other authorized users as requirements will be specific to that Agency or Authorized User. The bidder must detail how the contractor will be expected to provide timely service, including the setup and implementation of the system.

The bidder must demonstrate that the facility(ies) and system(s) are secure, and that confidential material and information will be safeguarded. The bidder must affirm that bidder is PCI DSS compliant. Disaster preparedness and disaster recovery plans must exist and be operational to ensure minimal disruption to the Program(s) in the event of such occurrences. Section VII details the disaster recovery/business continuity and fail-safe requirements.

OGS requires the successful bidder to meet the requirements of this RFP regardless of other present or future business commitments.

**D. Contract Duration**

The initial contract term for each contract will be four (4) years, with renewal options for two (2) two year periods at the discretion of the Department for Module 1 and OGS for Module 2. The final contract for this procurement will be based on the invariable contract conditions and negotiable topics set forth in Section XI – Contract Conditions, and the Performance Standards set forth in Section II - Performance Standards, Liquidated Damages and Reimbursements. If the bidder disagrees with any of the Section II and/or Section XI provisions, specific alternative language must be provided as part of the bidder’s proposal. Upon selection of the successful bidder, the Department reserves the right to negotiate the final contract and standards based on the RFP and the responses to the RFP. The successful bidder must sign the contract within thirty (30) calendar days after the award of the bid. If the successful bidder fails to do so, the Department reserves the right to begin negotiations with the second-highest rated bidder.

**E. Bid Evaluation**

Proposals submitted in response to this RFP will be evaluated based on the merits of the technical and financial proposals, alternate language proposed to Sections II and XI of this RFP, site visits (if deemed necessary), and interviews with bidders (if deemed necessary). For more details on the evaluation process, please see Section V - Evaluation Process, of this RFP. This RFP will result in a separate award for each module.

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**F. Definitions**

Terms used in this document shall be defined in accordance with Appendix B of this RFP (Part 1, §5 Definitions), which is hereby incorporated by reference. In addition, the following definitions shall apply, however, if there is an Off-line & On-line Debit Card association or other governing body definition which substantially differs or conflicts with or is additional to the definitions set forth in this RFP, the association or governing body definition shall govern, provided that it is consistent with New York State law and that the Bidder has provided a copy of such definition in their bid response. Failure to provide such definition in the bid response will result in the definitions set forth in the RFP as prevailing in the final contract:

1. **Association** - shall mean any debit network, and any successor organization or association of same, which is applicable hereunder. Also for the purposes of this Agreement, Association shall mean any other governing bodies associated with electronic payments including NACHA and any successor organization or association of same, which is applicable hereunder.
2. **Association Rules** - rules, regulations, releases, interpretations, and other requirements imposed and adopted by any Association.
3. **ATM** – Automated Teller Machine
4. **AUTHORIZED USER(S)** Agencies, or any other entity authorized by the laws of the State of New York to participate in NYS centralized contracts (including but not limited to political subdivisions, public authorities, public benefit corporations and certain other entities set forth in law), or the State of New York acting on behalf of one or more such Agencies or other entities, provided that each such Agency or other entity shall be held solely responsible for liabilities or payments due as a result of its participation.
5. **Authorized User Setup Form** - Form to establish authorization logistics for other Authorized Users, prior to establishment of debit card services for that Authorized User.
6. **Automated Clearing House (ACH) Network** - a nationwide electronic funds transfer system governed by the ACH Operating Rules and Guidelines, which processes electronically originated credit and debit transfers for participating financial institutions.
7. **Business Day** – Monday through Friday with the exception of legal bank holidays.
8. **Contractor** – the selected bidder(s) resulting from the competitive bid process with respect to this RFP.
9. **Debit Cards** - an electronic payment card which is processed either by entry of a PIN and funds are directly debited from the Device Users account (On-Line Debit Card) or processed

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like a credit/charge card and funds are not directly debited from the Device Users account (Off-Line Debit Card).

10. **Desirable** - a “Desirable” requirement is not mandatory, but is an enhancement or option that is preferred by the State.
11. **Fund Recipient** – the individual or entity receiving the debit card.
12. **LACE** – Financial Credit Ratings that measure the overall financial condition of an institution, as well as the institution’s ability to meet credit obligations.
13. **Mandatory** - the Bidder must meet or provide the stated requirement(s). If the minimum requirement is not met the bidder may be considered non-responsive and the bid may be rejected on that basis. However, a designation of “mandatory” does not preclude the bidder from offering additional benefits over and above the minimum requirement.
14. **National Automated Clearing House Association (NACHA)** - a not-for-profit banking trade association that promulgates the operating rules and guidelines for the ACH Network.
15. **PIN – Personal Identification Number**
16. **PCI DSS (Payment Card Industry Data Security Standards)** - uniform set of information security requirements for all national card brands (exclusive of boutique and private labels).
17. **Processing Year** – For the purpose of this RFP, processing year means the calendar in which the return was filed.
18. **Reloadable Debit Card** – Ability for new funds to be added only by the funding agency, either at a physical location or via the Internet.
19. **Request For Proposal (RFP)** - this bid document.
20. **Single Load Debit Card** - funded only once by the paying agency once the card is depleted of funds, it can no longer be used.
21. **Stored Value Debit Card** – monetary value is on the card at issuance to Fund Recipient, not an external account.

## **SECTION II - PERFORMANCE STANDARDS, LIQUIDATED DAMAGES and REIMBURSEMENTS**

### **FOR MODULE 1 – PIT Controlled Disbursement and Direct Deposit**

#### **A. Purpose of the Performance Standards**

Performance Standards establish the acceptable level of service for all aspects of the Contractor's processing systems and operations. The Performance Standards for this RFP include:

1. Automated Environment.
2. General Controls (including Logical System Security; Security/Confidentiality; Physical Security & Internal Controls; Change Management; Fail Safe/Disaster Recovery; and Procedures Documentation).
3. Performance Monitoring.
4. Processing.
5. Transmissions, Files and Reports.
6. Image Output.

#### **B. Future Program Changes**

The Performance Standards reflect current statutes, rules, regulations, policies and procedures. Future changes that alter the existing processing requirements may require the Performance Standards to be adjusted accordingly.

#### **C. Evaluating Contractor Compliance with Standards**

The Department's performance monitoring program for Contractor services provides a means to evaluate compliance with the Performance Standards. The Contractor's performance will be evaluated through performance monitoring reviews and audits to assess the effectiveness of specific functions and/or processes and to determine compliance with the Performance Standards. Accordingly, the performance monitoring program would ensure that:

1. Appropriate controls are implemented and maintained for complete and accurate processing of drafts, reports, and electronic files consistent with the Performance Standards.

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2. Timely and accurate processing of drafts and initiation of direct deposits is achieved, consistent with the Performance Standards.
3. Manual procedures and automated processing systems are implemented and maintained consistent with the Performance Standards.
4. Security measures are implemented and maintained, consistent with the Performance Standards.
5. Disaster recovery and business continuity capability is maintained, consistent with the Performance Standards.
6. Complete and accurate documentation is maintained, consistent with the Performance Standards.

**D. Liquidated Damages and Reimbursement Structure**

Failure to comply with the Performance Standards may result in the imposition of liquidated damages and reimbursements. Additionally, civil and/or criminal penalties exist for violation of secrecy and confidentiality statutes.

**E. Alternative Language**

The Program Performance Standards, Liquidated Damages and Reimbursements, as set forth in this section, represent the Department's preferred standards and liquidated damages. In the event a bidder provides specific alternative language to the Program Performance Standards, Liquidated Damages and Reimbursements, such alternative language will be evaluated utilizing a scaled rating whereby an affirmation of the Department's standard and/or liquidated damage receives the highest rating and the maximum deviation (based on the minimum allowed values stated below) from a standard or liquidated damage receives the lowest rating. The minimum values are as follows:

1. For Performance Standards: the Department will not accept any alternative language to the general controls standards. The Department will allow alternate language for timeliness standards on data and image output files of up to one business day. The Department will allow alternate language for completeness and accuracy standards for refund processing, however, the accuracy standards cannot be less than 98%.
2. For Liquidated Damages, the Department will not accept any alternative language that reduces a liquidated damage by more than 25% for specified dollar damages (e.g.:\$1,000).
3. The Department will not accept percentage reduction to the reimbursements.

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A bid which does not meet the minimum allowed values will be subject to disqualification.

**F. Standards, Liquidated Damages and Reimbursements (Module 1)**

**The imposition of liquidated damages and requests for reimbursements are at the Department's discretion.**

STANDARDS	LIQUIDATED DAMAGES and REIMBURSEMENTS
<b>1. Automated Environment</b>	
<b>A. Timeliness, Completeness and Accuracy – 100%</b>	
<p><b>1. A.1 Initial Environment</b></p> <p>All hardware and software required to operate and support the Program must be operational according to the agreed upon schedules and requirements. See Section VII - Program Development and Support Requirements and Section VIII - Implementation Requirements.</p>	<p>Only liquidated damages associated with failure to achieve other performance standards are applicable.</p>
<p><b>1. A.2 Program Certification</b></p> <p>All program development activities and deliverables required for the Contractor to receive certification must be available and operational according to the agreed upon certification dates in the implementation plan. See Section VII - Program Development and Support Requirements and Section VIII - Implementation Requirements.</p>	<p>Flat fee of \$500 per calendar day for the first week the initial certification date is missed. For each subsequent week, or portion thereof, a flat fee of \$2,500 will be assessed.</p>
<p><b>1. A.3 Program Development and Implementation Activity</b></p> <p>All program development activities and deliverables, required for implementation, must be available and operational according to the</p>	<p>Flat fee of \$2,000 per calendar day for the first week the initial implementation schedule results in delayed processing. For each subsequent</p>



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STANDARDS	LIQUIDATED DAMAGES and REIMBURSEMENTS
<p>agreed upon implementation dates in the implementation plan. See Section VII - Program Development and Support Requirements and Section VIII - Implementation Requirements.</p>	<p>week, or portion thereof, a flat fee of \$10,000 will be assessed.</p>
<p><b>1. A.4 System Modification</b></p> <p>The Contractor must accurately and timely implement and test any data and production system modifications and enhancements/maintenance which affect the Program, whether initiated by the Contractor, or as agreed upon pursuant to the Change Control Procedure (Appendix G). The Contractor must work with the Department to test and certify such system modifications and enhancements/maintenance prior to implementation. See Section VII - Program Development and Support Requirements and Section VIII - Implementation Requirements.</p>	<p>Reimbursement to the Department and/or taxpayer for any expenses, loss of revenue, etc. for failure to meet the standard.</p>
<p><b>1. A.5 System/Program Documentation</b></p> <p>All documentation related to the required services must be complete, accurate and available for Department review upon request. See Section VII - Program Development and Support Requirements and Section VIII - Implementation Requirements.</p> <p>The Department and the Contractor shall jointly determine a documentation delivery schedule, recognizing there may be a delay between the system/program completion and final documentation. See Section VII - Program Development and Support Requirements and</p>	<p>A flat fee of \$500 for each occurrence the deliverable is incomplete, inaccurate, or late based upon the agreed upon schedule.</p>

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STANDARDS	LIQUIDATED DAMAGES and REIMBURSEMENTS
Section VIII - Implementation Requirements.	
<b>2. General Controls</b>	
<b>A. Timeliness, Completeness and Accuracy – 100%</b>	
<p><b>2. A.1 Logical System Security</b></p> <p>The Contractor must implement and maintain the logical system security, according to the agreed upon requirements, to prevent unauthorized access to taxpayer and tax administration data. See Section VII - Program Development and Support Requirements and Section VIII - Implementation Requirements.</p> <p>The Contractor must implement and maintain the agreed upon adequate logical system security to prevent unauthorized access to the Department depository accounts. See Section VII - Program Development and Support Requirements and Section VIII - Implementation Requirements.</p>	<p>Reimbursement to the Department and/or taxpayer for any expenses, loss of revenue, etc. for failure to meet the standard;</p> <p>And /Or</p> <p>Liquidated damages of \$2,500 for each violation of unauthorized access. Corrective action and a timetable will be specified by the Department for each violation.</p>
<p><b>2. A.2 Security/Confidentiality</b></p> <p>The Contractor must implement and maintain the agreed upon security and confidentiality measures articulated in its technical proposal response. See Section VII - Program Development and Support Requirements and Section VIII - Implementation Requirements.</p> <p>The Contractor must agree to support Department efforts to criminally prosecute employees who have violated the secrecy provisions of the NYS Tax Law and the Internal Revenue Code with respect to the services. See Section VII - Program Development and Support</p>	<p>Reimbursement to the Department and/or taxpayer for any expenses, loss of revenue, etc. for failure to meet the standard;</p> <p>And /Or</p> <p>Liquidated Damages of \$2,500 for each violation of the security measures as they relate to the services. Corrective action and a timetable will be specified by the Department for each violation.</p>

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STANDARDS	LIQUIDATED DAMAGES and REIMBURSEMENTS
Requirements and Section VIII - Implementation Requirements.	
<p><b>2. A.3 Physical Security and Internal Controls</b></p> <p>The Contractor must maintain physical security and internal controls for all sites and services required in order to adequately prevent or minimize the risk of loss, destruction or theft of physical assets and unauthorized access. See Section VII - Program Development and Support Requirements and Section VIII - Implementation Requirements.</p>	<p>Reimbursement to the Department and/or taxpayer for any expenses, loss of revenue, etc. for failure to meet the standard;</p> <p>And /Or</p> <p>Liquidated damages of \$2,500 for each violation as it relates to the services. Corrective action and a timetable will be specified by the Department for each violation.</p>
<p><b>2. A.4 Change Management</b></p> <p>The Contractor must provide the Department thirty (30) days prior notification of planned changes to the organization, expansion of services to other clients, and/or hardware and software modifications that either directly or indirectly impact required services. See Section VII - Program Development and Support Requirements.</p> <p>The Contractor must utilize the Change Procedures (Appendix G) to identify, request, analyze, prioritize, and track any changes to the services. See Section VII - Program Development and Support Requirements.</p>	<p>Reimbursement to the Department and/or taxpayer for any expenses, loss of revenue, etc. for failure to meet the standard.</p> <p>And /Or</p> <p>Liquidated damages of \$2,500 for each violation as it relates to the Services. If appropriate, corrective action and a timetable will be specified by the Department.</p>
<p><b>2. A.5 Fail Safe/Disaster Recovery</b></p> <p>The Contractor must implement and maintain the agreed upon fail safe/disaster recovery procedures articulated in its technical proposal response throughout the duration of the</p>	<p>Reimbursement to the Department and/or taxpayer for any expenses, loss of revenue, etc. for failure to meet the standard.</p>

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<b>STANDARDS</b>	<b>LIQUIDATED DAMAGES and REIMBURSEMENTS</b>
<p>contract, and implement the procedures when the Department and the Contractor jointly determine that a disaster has occurred. See Section VII - Program Development and Support Requirements and Section VIII - Implementation Requirements.</p> <p>The Contractor must maintain and retain both on-site and off-site processible electronic copies of all data files that are transmitted to the Department. See Section VII - Program Development and Support Requirements and Section VIII - Implementation Requirements.</p>	<p>And /Or</p> <p>Liquidated Damages of \$5,000 for each failure to maintain the agreed upon fail safe/disaster recovery operations procedures which impact the services.</p>
<p><b>2. A.6 Procedures Documentation</b></p> <p>The Contractor must implement and maintain all procedures in accordance with the agreed upon requirements. See Section VII - Program Development and Support Requirements and Section VIII - Implementation Requirements.</p>	<p>Liquidated damages of \$500 for each failure to meet the standard. Corrective action and a timetable will be specified by the Department for each violation.</p>
<p><b>3.0 Performance Monitoring</b></p>	
<p><b>3. A. Timeliness, Completeness and Accuracy – 100%</b></p>	
<p><b>3. A.1 Performance Monitoring</b></p> <p>The Contractor must cooperate fully with the Department and the Office of State Comptroller, and/or their designees for all performance monitoring audits and reviews. See Section VII - Program Development and Support Requirements.</p>	<p>Liquidated damages of \$1,000 per day for each failure to meet this standard.</p>
<p><b>4.0 Processing</b></p>	

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STANDARDS	LIQUIDATED DAMAGES and REIMBURSEMENTS
<b>4. A. Timeliness of Processing - 100% Timeliness</b>	
<p><b>4. A.1 Report Unmatched Drafts</b></p> <p>The Contractor must report all unmatched drafts to the Department by 10:00 a.m. on the day after presentment to determine the disposition of such drafts.</p>	<p>Liquidated damages of \$100 per unmatched draft not reported timely.</p>
<p><b>4. A.2 Cancel Payment Orders</b></p> <p>The Contractor must post cancel payment orders by the agreed upon cut-off time. See Section VI – Functional Requirements.</p>	<p>Liquidated damages of \$100 per draft for cancel payment instruction not completed timely.</p>
<p><b>4. A.3 Report Daily Funding</b></p> <p>The Contractor must notify OSC of the daily presentment total no later than 10:00 a.m., in accordance with requirements in Section VI – Functional Requirements.</p>	<p>In the event the Contractor has not notified OSC in accordance with the requirement, the Contractor must provide funds to ensure all drafts are paid and are not returned for insufficient funds for failure of the Contractor to make the notification by 10:00 a.m.</p> <p>Liquidated damages of \$100 per each paid draft that fails to meet the standard</p>
<p><b>4. A.4 Paid Draft Retention</b></p> <p>The Contractor must maintain paper paid drafts or paper Image Replacement Documents (IRD’s) when available for at least one year from the paid date and must make copies available to the Department, upon request, within one business</p>	<p>Liquidated damages of \$100 per each paid draft that fails to meet the standard.</p> <p>And /Or</p>

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STANDARDS	LIQUIDATED DAMAGES and REIMBURSEMENTS
day.	Reimbursement to the Department and/or taxpayer for any expenses, loss of revenue, etc. for failure to meet the standard.
<p><b>4. A.5 Images of Paid Drafts</b></p> <p>Images of paid drafts must be received by the Department within the agreed upon timeframe. See Section VI – Functional Requirements.</p>	<p>Liquidated damages of \$100 per each paid draft that fails to meet the standard</p> <p>And</p> <p>Reimbursement to the Department of direct expenses incurred up to the value of the draft as a result of failure to produce the image of the draft.</p>
<p><b>4. A.6 Draft Issue File</b></p> <p>The Contractor must provide for the daily receipt of draft issue files with the agreed upon frequency and schedule. See Section VI - Functional Requirements.</p>	<p>Liquidated damages of \$1,000 per each occurrence for failure to meet the standard.</p>
<p><b>4. A.7. Forgery Drafts</b></p> <p>The Contractor must reimburse the Department within three (3) business days for any paid draft that is deemed to be a forgery.</p>	<p>Liquidated damages of \$100 per each occurrence for failure to meet the standard.</p> <p>And</p> <p>Reimbursement to the taxpayer for lost interest for failure to meet the standard.</p>
<p><b>4. A.8. Online System</b></p> <p>All online systems must be available during the</p>	<p>Liquidated damages of \$500 a day for each day an interruption in service occurs.</p>

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<p>agreed upon times based on the proposal. See Section VI - Functional Requirements.</p> <p>Information on drafts must be accessible on the online system on the business day following payment by the agreed upon time. See Section VI - Functional Requirements.</p>	
<p><b>4. A.9. Outstanding Drafts</b></p> <p>At the request of the Department, the Contractor must provide an electronic list of outstanding drafts issued during the calendar year specified by the Department.</p> <p>The Contractor must, at the request of the Department, remove any outstanding drafts (including cancelled items) issued at least one year prior, as defined in § 102 of the State Finance Law, but not yet presented. A file and report of the removed issuances must be sent to the Department, in accordance with the agreed upon timeframe and method (see Section VI – Functional Requirements).</p>	<p>Liquidated damages of \$100 per draft that is not appropriately removed from the systems.</p>
<p><b>4. A.10. Direct Deposit</b></p> <p>All funds transfers (i.e., ACH credits) must be initiated so that funds are available for withdrawal by the taxpayer(s) at the opening of business on the specified dates contained on the data transmission(s) and/or file provided by the Department. See Section VI – Functional Requirements</p>	<p>Reimbursement to the Department and/or taxpayer for any expenses, loss of revenue, etc. for failure to meet the standard.</p> <p>And/or</p> <p>Liquidated damages of 100% reduction in total fees associated with the deposit.</p>

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<b>4. B. Accuracy and Completeness - 100%</b>	
<p><b>4. B.1 Unmatched Drafts</b></p> <p>The Contractor must not pay any unmatched draft without prior Department approval.</p>	<p>Reimbursement to the Department for amounts paid for all unmatched drafts.</p> <p>And</p> <p>Reimbursement to the Department for lost interest on the amounts paid for unmatched drafts.</p>
<p><b>4. B.2 Cancel Payment Orders and Reports</b></p> <p>The Contractor must post all cancel payment orders accurately and completely.</p> <p>The Contractor must keep cancel payment orders in effect until the Department authorizes its removal.</p>	<p>Reimburse the Department for any loss incurred for each cancel order that fails to meet the standard</p> <p>OR (whichever is greater)</p> <p>Liquidated damages of \$100 per each cancel order that fails to meet the standard.</p>
<p><b>4. B.3 Report Daily Funding</b></p> <p>The Contractor must accurately report the daily funding requirements to OSC. See Section VI - Functional Requirements.</p>	<p>Reimbursement to the Department for lost interest for over funding the account</p> <p>And</p> <p>The Contractor must provide funds to ensure all drafts are paid and are not returned for insufficient funds due to underfunding the account as the result of an inaccurate funding report.</p>



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<p><b>4. B.4 Paid Draft Retention</b></p> <p>The Contractor must accurately provide copies of archived paper paid drafts or paper IRD's when available, in accordance to RFP requirements. See Section VI- Functional Requirements.</p>	<p>Liquidated damages of \$100 per each paid draft that fails to meet the standard</p> <p>And</p> <p>Reimbursement to the Department for the value of the draft if failure to meet the standard results in a direct cost to the Department.</p>
<p><b>4. B.5 Images of Paid Drafts</b></p> <p>The Contractor must provide accurate images of the paid drafts to the Department, in accordance with the agreed upon format. See Section VI - Functional Requirements.</p> <p>The Contractor must image the front and back of all paid remittances and ensure that each image meets generally accepted industry standards for quality, and maintains or improves the readability of the original remittance document.</p> <p>100% of the images must be retrievable by paid date and draft number.</p>	<p>Liquidated damages of \$100 per each paid draft that fails to meet the standard</p> <p>And</p> <p>Reimbursement to the Department for the value of the draft if failure to meet the standard results in a direct cost to the Department.</p>
<p><b>4. B.6 Forgery Drafts</b></p> <p>The Contractor must accurately process all forgery affidavits received from the Department within three business days after notification. See Section VI - Functional Requirements.</p>	<p>Liquidated damages of \$100 per each forgery affidavit that fails to meet the standard.</p>
<p><b>4. B.7 Outstanding Drafts</b></p> <p>The Contractor must, at the request of the</p>	<p>Liquidated damages of \$100 per draft that is not</p>

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Department, remove from the controlled disbursement system any outstanding drafts and cancelled payments on any outstanding drafts after one (1) year from the date of issuance as defined in Section 102 of the State Finance Law. The removal must occur within two (2) business days of the request.	cancelled and/or not removed from the controlled disbursement system.
<b>4. B.8 Destruction of Original Drafts</b>  The Contractor must provide for the confidential destruction of original drafts after the required retention period.	Liquidated damages of \$100 per draft that is not confidentially destroyed.
<b>4. B.9 Direct Deposit</b>  All direct deposits initiated by the Contractor (i.e., ACH credits) must be accurate and complete.	Reimbursement to the Department and/or taxpayer for any expenses, loss of revenue, etc. for failure to meet the standard  And/or  Liquidated damages of \$1,000 per occurrence.
<b>5.0 Transmissions, Files and Reports</b>	
<b>5.A Accuracy and Completeness – 100%</b>	
<b>5. A.1 Reports</b>  The Contractor must provide the Department and OSC with accurate, complete and legible reports	The Contractor will correct reports at the Contractor's expense.
<b>5.A.2 Data and Image Transmissions</b>  All data and image transmissions shall be	

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STANDARDS	LIQUIDATED DAMAGES and REIMBURSEMENTS
<p>processable in accordance with requirements and procedures of this RFP. See Section VI - Functional Requirements.</p>	<p>Corrective action and a timetable will be specified by mutual agreement between the Contractor and the Department for each violation</p> <p>And/or</p> <p>Liquidated damages of \$5,000 for each violation for failure to meet the corrective action and/or the timetable as mutually agreed upon by the Contractor and the Department.</p>
<p><b>5. B. Timeliness of Image Output - 100%</b></p>	
<p><b>5. B.1 Reports</b></p> <p>The Contractor must provide the Department and OSC with reports in accordance with the agreed upon timeframe.</p>	<p>Corrective action and a timetable will be specified by mutual agreement between the Contractor and the Department for each violation. Corrective action and a timetable will be specified by mutual agreement between the Contractor and the Department for each violation</p> <p>And/or</p> <p>Liquidated damages of \$5,000 for each violation for failure to meet the corrective action and/or the timetable as mutually agreed upon by the Contractor and the Department.</p>
<p><b>5.B.2 Data Transmissions</b></p> <p>All data transmissions shall be processible in accordance with the agreed upon timeframe.</p>	<p>Corrective action and a timetable will be specified by mutual agreement between the Contractor and the Department for each violation</p> <p>And/or</p> <p>Liquidated damages of \$5,000 for each violation for failure to meet the corrective action and/or the timetable as mutually agreed upon by the</p>

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STANDARDS	LIQUIDATED DAMAGES and REIMBURSEMENTS
	Contractor and the Department.
<b>6. Image Output</b>	
<b>6. A. Accuracy of Image Output - 100%</b>	
<b>6. A.1 Image Output</b>  The Contractor must provide the Department with accurate image output for the front and back of each paid draft.	Liquidated damages of \$100 per each paid draft image that fails to meet the standard  And  Reimbursement of direct expenses incurred up to the value of the draft image as a result of failure to produce the draft.
<b>6. B. Timeliness of Image Output - 100%</b>	
<b>6. B.1 Image Output</b>  The Contractor must provide the Department with image output of paid drafts at the agreed upon timeframe on the business day following the date of payment.	Corrective action and a timetable will be specified by mutual agreement between the Contractor and the Department for each violation  And/or  Liquidated damages of \$5,000 for each violation for failure to meet the corrective action and/or the timetable as mutually agreed upon by the Contractor and the Department.

## **SECTION II - PERFORMANCE STANDARDS MODULE 2 – Debit Cards**

### **A. Purpose of the Performance Standards**

Performance Standards establish the acceptable level of service for all aspects of the Contractor's processing systems and operations. The Performance Standards for this RFP include:

- (1) Automated Environment.
- (2) General Controls (including Logical System Security; Security/Confidentiality; Physical Security & Internal Controls; Change Management; Fail Safe/Disaster Recovery; and Procedures Documentation).
- (3) Performance Monitoring
- (4) Processing
- (5) Transmissions, Files and Reports

### **B. Future Program Changes**

The Performance Standards reflect current statutes, rules, regulations, policies and procedures. Future changes that alter the existing processing requirements may require the Performance Standards to be adjusted accordingly.

### **C. Evaluating Contractor Compliance with Standards**

The Department's performance monitoring program for Contractor services provides a means to evaluate compliance with the Performance Standards. The Contractor's performance will be evaluated through performance monitoring reviews and audits to assess the effectiveness of specific functions and/or processes and to determine compliance with the Performance Standards. Accordingly, the performance monitoring program would ensure that:

- (1) Appropriate controls are implemented and maintained for complete and accurate processing of reports, and electronic files consistent with the Performance Standards.
- (2) Manual procedures and automated processing systems are implemented and maintained consistent with the Performance Standards.
- (3) Security measures are implemented and maintained, consistent with the Performance

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Standards.

- (4) Disaster recovery and business continuity capability is maintained, consistent with the Performance Standards.
- (5) Complete and accurate documentation is maintained, consistent with the Performance Standards.

**D. Liquidated Damages and Reimbursement structure**

For DTF, failure to comply with the Performance Standards may result in the imposition of liquidated damages and/or reimbursements. Additionally, civil and/or criminal penalties exist for violation of secrecy and confidentiality statutes.

**E. Alternative Language**

- (1) The Program Performance Standards, as set forth in this section, represent the OGS’ preferred standards. In the event a bidder provides specific alternative language to the Program Performance Standards, such alternative language will be evaluated utilizing a scaled rating whereby an affirmation of OGS’ standard receives the highest rating.
- (2) For Performance Standards: OGS will not accept any alternative language to the general controls standards.
- (3) A bid which does not meet the minimum allowed values will be subject to disqualification.

**Module 2 – Debit Cards**

STANDARDS	LIQUIDATED DAMAGES AND REIMBURSEMENTS
<b>1. Automated Environment</b>	
<b>A. Timeliness, Completeness and Accuracy – 100%</b>	
<p><b>1. A.1 Initial Environment</b></p> <p>All hardware and software required to operate and support the Program must be operational according to the agreed upon schedules and requirements. See Section VII - Program Development and Support Requirements and Section VIII - Implementation Requirements.</p>	<p>For DTF, only liquidated damages associated with failure to achieve other performance standards are applicable.</p>

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STANDARDS	LIQUIDATED DAMAGES AND REIMBURSEMENTS
<p><b>1. A.2 Program Development</b></p> <p>All program development activities and deliverables by the Contractor as required by the Authorized User Set Up Form must be available and operational according to the agreed upon dates in the Authorized User Set Up Form. See Appendix L Authorized User Set Up Form.</p>	<p>For DTF, a flat fee of \$500 per calendar day for the first week the initial certification date is missed. For each subsequent week, or portion thereof, a flat fee of \$2,500 will be assessed.</p>
<p><b>1.A.3 Program Certification</b></p> <p>All program development activities and deliverables required for the Contractor to receive certification must be available and operational according to the agreed upon dates in the Authorized User Set Up Form. See Appendix L Authorized User Set Up Form.</p>	<p>For DTF, a flat fee of \$500 per calendar day for the first week the initial certification date is missed. For each subsequent week, or portion thereof, a flat fee of \$2,500 will be assessed.</p>
<p><b>1. A.4 System Modification</b></p> <p>The Contractor must accurately and timely implement and test any data and production system modifications and enhancements/maintenance which affect the Program, whether initiated by the Contractor, or as agreed upon pursuant to the purchase order or Authorized User Set Up Form – Appendix L. See Section VII - Program Development and Support Requirements and Section VIII - Implementation Requirements.</p>	<p>For DTF, reimbursement to the Department and/or taxpayer for any expenses, loss of revenue, etc. for failure to meet the standard.</p>
<p><b>1. A.5 System/Program Documentation</b></p> <p>All documentation related to the required services must be complete, accurate and available for Authorized User review upon request. See Section VII - Program Development and Support Requirements and Section VIII - Implementation</p>	<p>For DTF, a flat fee of \$500 for each occurrence the deliverable is incomplete, inaccurate, or late based upon the agreed upon schedule.</p>

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STANDARDS	LIQUIDATED DAMAGES AND REIMBURSEMENTS
Requirements.	
<b>2. General Controls</b>	
<b>A. Timeliness, Completeness and Accuracy – 100%</b>	
<p><b>2. A.1 Logical System Security</b></p> <p>The Contractor must implement and maintain the logical system security, according to the agreed upon requirements, to prevent unauthorized access to Fund Recipient and State Agency or other Authorized User data. See Section VII - Program Development and Support Requirements and Section VIII - Implementation Requirements.</p> <p>The Contractor must implement and maintain the agreed upon adequate logical system security to prevent unauthorized access to the Agency or other Authorized User depository accounts. See Section VII - Program Development and Support Requirements and Section VIII - Implementation Requirements.</p>	<p>For DTF, reimbursement to the Department and/or taxpayer for any expenses, loss of revenue, etc. for failure to meet the standard;</p> <p>And /Or</p> <p>Liquidated damages of \$2,500 for each violation of unauthorized access. Corrective action and a timetable will be specified by the Department for each violation.</p>
<p><b>2. A.2 Security/Confidentiality</b></p> <p>The Contractor must implement and maintain the agreed upon security and confidentiality measures articulated in its technical proposal response. See Section VII - Program Development and Support Requirements and Section VIII - Implementation Requirements.</p>	<p>For DTF, reimbursement to the Department and/or taxpayer for any expenses, loss of revenue, etc. for failure to meet the standard;</p> <p>And /Or</p> <p>Liquidated Damages of \$2,500 for each violation of the security measures as they relate to the services. Corrective action and a timetable will be specified by the Department for each violation.</p>



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STANDARDS	LIQUIDATED DAMAGES AND REIMBURSEMENTS
<p><b>2. A.3 Physical Security and Internal Controls</b></p> <p>The Contractor must maintain physical security and internal controls for all sites and services required in order to adequately prevent or minimize the risk of loss, destruction or theft of physical assets and unauthorized access. See Section VII - Program Development and Support Requirements and Section VIII - Implementation Requirements.</p>	<p>For DTF, reimbursement to the Department and/or taxpayer for any expenses, loss of revenue, etc. for failure to meet the standard;</p> <p>And /Or</p> <p>Liquidated damages of \$2,500 for each violation as it relates to the services. Corrective action and a timetable will be specified by the Department for each violation.</p>
<p><b>2. A.4 Change Management</b></p> <p>The Contractor must provide OGS and the authorized user thirty (30) days prior notification of planned changes to the organization, expansion of services to other clients, and/or hardware and software modifications that either directly or indirectly impact required services. See Section VII - Program Development and Support Requirements.</p>	<p>For DTF, reimbursement to the Department and/or taxpayer for any expenses, loss of revenue, etc. for failure to meet the standard.</p> <p>And /Or</p> <p>Liquidated damages of \$2,500 for each violation as it relates to the Services. If appropriate, corrective action and a timetable will be specified by the Department.</p>
<p><b>2. A.5 Fail Safe/Disaster Recovery</b></p> <p>The Contractor must implement and maintain the agreed upon fail safe/disaster recovery procedures articulated in its technical proposal response throughout the duration of the contract, and implement the procedures when the authorized user determines that a disaster has occurred. See Section VII - Program Development and Support Requirements and Section VIII - Implementation Requirements.</p> <p>The Contractor must maintain and retain both on-site and off-site processible electronic copies of all</p>	<p>For DTF reimbursement to the Department and/or taxpayer for any expenses, loss of revenue, etc. for failure to meet the standard.</p> <p>And /Or</p> <p>Liquidated Damages of \$5,000 for each failure to maintain the agreed upon fail safe/disaster recovery operations procedures which impact the services.</p>

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<p>data files that are transmitted to or from OGS. See Section VII - Program Development and Support Requirements and Section VIII - Implementation Requirements.</p>	
<p><b>2. A.6 Procedures Documentation</b></p> <p>The Contractor must implement and maintain all procedures in accordance with the agreed upon requirements. See Section VII - Program Development and Support Requirements and Section VIII - Implementation Requirements.</p>	<p>For DTF, liquidated damages of \$500 for each failure to meet the standard. Corrective action and a timetable will be specified by the Department for each violation.</p>
<p><b>3.0 Performance Monitoring</b></p>	
<p><b>3. A. Timeliness, Completeness and Accuracy – 100%</b></p>	
<p><b>3. A.1 Performance Monitoring</b></p> <p>The Contractor must cooperate fully with OGS, the Agency, or other Authorized User and the Office of State Comptroller, and/or their designees for all performance monitoring audits and reviews. See Section VII - Program Development and Support Requirements.</p>	<p>For DTF, liquidated damages of \$1,000 per day for each failure to meet this standard.</p>
<p><b>4.0 Processing</b></p>	
<p><b>4. A. Timeliness of Processing</b></p>	
<p><b>4. A.1. Online System</b></p> <p>All online systems must be available during the agreed upon times based on the proposal. See Section VI - Functional Requirements.</p>	<p>For DTF, liquidated damages of \$500 a day for each day an interruption in service occurs.</p>

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STANDARDS	LIQUIDATED DAMAGES AND REIMBURSEMENTS
<p><b>4.A.2. Debit Cards</b></p> <p>All debit cards must be issued to the Fund Recipient within the timeline agreed to on the Authorized User Set Up Form. See Section VI - Functional Requirements.</p>	<p>For DTF, liquidated damages of \$1,000 per occurrence.</p>
<p><b>4. B. Accuracy and Completeness</b></p>	
<p><b>4. B.1 Cancel Payment Orders and Reports</b></p> <p>The Contractor must post all cancel payment orders accurately and completely.</p> <p>The Contractor must keep cancel payment orders in effect until the Authorized User authorizes its removal.</p>	<p>For DTF, reimburse the Department for any loss incurred for each cancel order that fails to meet the standard</p> <p>OR (whichever is greater)</p> <p>Liquidated damages of \$100 per each cancel order that fails to meet the standard.</p>
<p><b>4.B.2 Debit Cards</b></p> <p>All debit cards issued by the Contractor must be accurate and complete.</p>	<p>For DTF, liquidated damages of \$1,000 per day for each failure to meet this standard.</p>
<p><b>5.0 Transmissions, Files and Reports</b></p>	
<p><b>5.A Accuracy and Completeness</b></p>	
<p><b>5. A.1 Reports</b></p> <p>The Contractor(s) must provide the Authorized User, OGS and OSC (for agencies), with accurate, complete and legible reports.</p>	<p>For DTF, the Contractor will correct reports at the Contractor's expense.</p>
<p><b>5.A.2 Data Transmissions</b></p> <p>All data transmissions shall be processible in accordance with requirements and procedures of</p>	<p>For DTF, corrective action and a timetable will be specified by mutual agreement between the</p>

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<b>STANDARDS</b>	<b>LIQUIDATED DAMAGES AND REIMBURSEMENTS</b>
this RFP. See Section VI - Functional Requirements.	Contractor and the Department for each violation  And/or  Liquidated damages of \$5,000 for each violation for failure to meet the corrective action and/or the timetable as mutually agreed upon by the Contractor and the Department.

## SECTION III – ADMINISTRATIVE CONDITIONS AND PROPOSAL RESPONSE REQUIREMENTS

### A. Procurement Events

#### 1. Notification of Intent to Bid

Bidders intending to submit a proposal to this RFP should provide a “Notification of Intent to Bid” (Appendix D-1) by the date referenced in the Preface. The “Notification of Intent to Bid” must be filed by the Prime Contractor only. Refer to the Preface section of this RFP for the filing date.

#### 2. Submission of Questions

Bidders will have two opportunities to submit questions to the Department regarding this RFP for both Module 1 and Module 2, as indicated in the Preface of this RFP. The Department will subsequently make available, on the Department’s web site (refer to the Preface section of the RFP), written answers to all substantive questions, and will make an effort to answer all questions by the dates noted in the Preface. If the Department is not able to do so by those dates, additional notification will be provided.

**All bidder questions regarding both Module 1 and Module 2 should be submitted in writing to: [bfs\\_contracts@tax.state.ny.us](mailto:bfs_contracts@tax.state.ny.us)**

#### 3. Submission of Proposals

The dates for Submission of Proposals are listed in the Preface section of this RFP. No late bids will be accepted. Delays in the United States Postal Service deliveries or any other means of transmittal, including couriers or agents of the State, shall not excuse late bid submissions.

### B. Proposal Requirements

#### Proposal Packaging

The proposal and other related materials must be enclosed in sealed containers and delivered to the address referenced in the Preface section of this RFP. The following must be visibly inscribed on the outside of each package:

Proposal to Provide Services for the  
“PIT Refund Controlled Disbursement, Direct Deposit and Statewide Debit Card Services”

PIT Controlled Disbursement, Direct Deposit and Statewide Debit Card Services  
Section III - Administrative Conditions and Proposal Response Requirements

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Contractor Name and Address  
Date of Submission

Mail deliveries requiring a signature of receipt should be addressed to the Department's campus address, but the delivery service should be instructed to deliver the bid documents to the address referenced in the Preface of this RFP.

**Submission of Sealed Proposals**

Bidder's proposals must be submitted in sealed packages and received by the time and date specified in the Key Events Timeline.

Full proposals are to be submitted for Module 1 and Module 2. If bidder is submitting a proposal for both Module 1 and Module 2, a full separate proposal must be submitted for each module. Each proposal shall be submitted with three (3) original signature pages.

Part I – Technical Qualifications & Service Requirements

Part II – Financial Requirements

Part I must be complete separately and sealed separately from Part II in order that the technical and financial evaluations may be accomplished independently, concurrently and the evaluation of the Technical Qualifications & Service Requirements submittal can be made strictly on the basis of its merits.

Part II Financial Requirements, including hard copy or CD-ROM, shall not be included in the Part I sealed envelope and shall be submitted in another sealed envelope. If Part II information is included within the same sealed envelope as the Part I information, Bidder's proposal may be disqualified. Both Part I and Part II should however, be included in the same box/package delivered to the Department.

Note: If the Bidder is including material designated as confidential/proprietary it should be identified in the proposal, as per Appendix B, clause 14.

All proposals must be completed in ink or machine produced. Proposals submitted hand written in pencil will be disqualified. The Issuing Office prefers that the proposals not be hand written, but this is not mandatory as long as the respondent uses ink or an indelible pen.

Bidders must submit:

1. Ten copies of the Bid Documents detailed below, at C.1.through C.7 and found in Appendix D.

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2. Ten bound copies of the Technical Proposal, including page numbers on all pages, and five copies of the technical Proposal in .pdf format on CDs.
3. Ten bound copies of the Financial Proposal, including page numbers on all pages, and five copies of the Financial Proposal in .pdf format on CDs.
4. Ten bound copies of the responses to Section II – Performance Standards, Liquidated Damages and Reimbursements and Section XI – Invariable Contract Conditions and Negotiable Topics and five copies of the responses in .pdf format on CDs.
5. To facilitate requests for information under the Freedom of Information Law (FOIL), contractors are required to provide three (3) copies, on CDs, of its complete proposal in a non-.pdf format (e.g., MS Word, MS Excel, etc.).

Bidders are responsible for ensuring that the .pdf version on CDs mirrors the paper version.

**C. Bid Documents**

The following forms and documents, Appendix D-2 through D-7, must be submitted with the proposals (see I. C, above):

1. Attestation Form

Each bidder must acknowledge and attest that it has read and agrees to the general contract requirements as outlined in Sections VI through X of the RFP (see Appendix D-2 of this RFP).

2. Non-Collusive Bidding Practices Certification

Each bidder is required to submit a Non-Collusive Bidding Certification (see Appendix D-3 of this RFP) as part of the bid submission.

3. McBride Fair Employment Principles

Each bidder is required to complete the MacBride Fair Employment Principles Form (see Appendix D-4 of this RFP), as part of the bid submission.

4. Contractor Certification and Certificates of Authority (Sales and Use Tax Documentation)

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded state contracts for commodities, services and technology valued at more than \$100,000 to certify to the Department or OGS that they are registered to collect New York State and local sales and compensating use taxes. The law applies to

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contracts where the total amount of such contractors' sales delivered into New York State are in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

The law imposes upon certain contractors the obligation to certify whether or not the contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use tax and contractors must certify to the Department or OGS that each affiliate and subcontractor exceeding such sales threshold is registered with the DTF to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving agency, from approving a contract awarded to a contractor meeting the registration requirements but who is not so registered in accordance with the law.

See Appendix D-5 for contractor certification forms and instructions for completing the forms. Unless the information upon which the ST-220-TD is based on changes, this form only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s), a new sST-220-TD must be filed with the DTF.

Form ST-220-CA must be filed with the Department or OGS (see Appendix D-5 of this RFP) and submitted certifying that the contractor filed the ST-220-TD with the DTF. Bidders may call the DTF at 1-800-698-2931 (outside NY State call 518-485-6800) for any questions relation to Section 5-a of the Tax Law and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF's web site: <http://www.nystax.gov>.

5. Vendor Responsibility Questionnaire

Article XI Section 163(4) (d) of the State Finance Law states that "service contracts shall be awarded on the basis of best value to a responsive and responsible offerer." Each bidder must complete and submit a Vendor Responsibility Questionnaire (see [http://www.osc.state.ny.us/vendrep/vendor\\_index.htm](http://www.osc.state.ny.us/vendrep/vendor_index.htm), either online or on paper). The Bidder Responsibility Questionnaire will be analyzed to ensure that the bidder is responsible. Bidders, who are not deemed to be responsible, based on this analysis, may be rejected.

6. Procurement Lobbying Act – Offerer Affirmation of Understanding and Compliance with Procurement Lobbying Guidelines



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- a. New York State Finance Law 139-j(6)(b) requires the Department of Taxation and Finance seek written affirmation from all Offerers as to the Offerer's understanding of and agreement to comply with the DTF procedures relating to permissible contacts during a government procurement. Information related to the Procurement Lobbying Law and the Department's guidelines are posted on the Department's procurement website at <http://www.nystax.gov/procurement> and are referenced below. Additional information can be found on the Office of General Services web site at:  
<http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

Offerers are required to sign and submit the "Offerer Affirmation of Understanding of, and Compliance with, Procurement Lobbying Guidelines" (see Appendix D-6).

- b. Offerer Disclosure of Prior Non-Responsibility Determinations New York State Finance Law §139-k(2) obligates a Governmental Entity to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (1) a violation of State Finance Law §139-j or (2) the intentional provision of false or incomplete information to a Governmental Entity. The terms "Offerer" and "Governmental Entity" are defined in State Finance Law § 139-k(1). State Finance Law §139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such contact does not fall within one of the exemptions).As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this Section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe. See State Finance Law §§139-j (10) (b) and 139-k (3).

A Governmental Entity must include a disclosure request regarding prior non-

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responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or Contract documents, as applicable, for Procurement Contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract. It shall be submitted to the Governmental Entity conducting the Governmental Procurement.

c. Offerer's Certification of Compliance with State Finance Law 139-k(5)

New York State Finance Law 139-k(5) requires that every Procurement Contract award subject to the provisions of State Finance Law 139-k or 139-j shall contain a certification by the Offerer that all information provided to the procuring Government Entity with respect to State Finance Law 139-k is complete, true and accurate.

The Department or OGS reserves the right to terminate any Contract awarded as a result of this RFP in the event it is found that the certification filed by the Offerer/Bidder in accordance with New York State Finance Law 139-k was intentionally false or intentionally incomplete

7. Public Officers Law

All Bidders/Contractors and their employees must comply with Public Officers Law §73 and §74, Chapter 1 of the Laws of 2005, the Procurement Lobbying Reform Act of 2005, and other state statutes, rules, regulations, and executive orders establishing the ethical standards for the conduct of business with New York State. In signing the Bid, the Bidder certifies full compliance with those provisions for any present or future dealings, transactions, sales, Contracts, services, offers, relationships etc., involving New York State and/or its employees. Failure to comply with those provisions may result in disqualification from the bidding process, termination of Contracts, and/or other civil or criminal proceedings as required by law.

The Contractor shall complete and sign Appendix D-7, Public Officer's Law, Section 73.4 which addresses business or professional activities by state officers and employees and party officers. This form shall be made part of the resultant contract.

D. Technical Proposal

**Module 1:**

The Technical Proposal must include the following sections:

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1. Section 1 – Executive Summary

This section should be directed to the Department’s upper level management and should contain a summary of management considerations. Bidders should utilize this Section to demonstrate how their proposal, services, and/or products meet the Department’s procurement objectives as outlined in Section 1 – Introduction of this RFP. The Executive Summary must address, at a minimum:

- a. The executive commitment of the bidder, including the responsible executives and a description of their responsibilities in the organization and in this particular procurement.
- b. Plans for the acquisition, merger or other restructuring of the organization or that of any sub-contractor.
- c. The bidder’s strategic direction, including current technology policies, ongoing commitment to research and development, and plans for future services and product lines which may affect the Program(s) and services required herein.
- d. Conceptual overview of the solution that is being proposed for the program.
- e. A brief corporate history.

2. Section 3 – Responses to Requirements – Sections IV, VI, VII, VIII and IX. This section must contain responses to the individual requirements contained in Sections IV, VI, VII, VIII and IX.

**Module 2:**

The Technical Proposal must include the following sections:

1. Section 1 – Executive Summary

Bidders should utilize this Section to demonstrate how their proposal, services, and/or products meet OGS’ procurement objectives as outlined in Section 1 – Introduction of this RFP. The Executive Summary must address, at a minimum:

- a. The executive commitment of the bidder, including the responsible executives and a description of their responsibilities in the organization and in this particular procurement.
- b. Plans for the acquisition, merger or other restructuring of the organization or that of any sub-contractor.

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- c. The bidder's strategic direction, including current technology policies, ongoing commitment to research and development, and plans for future services and product lines which may affect the Program(s) and services required herein.
- d. Conceptual overview of the solution that is being proposed for the program.
- e. A brief corporate history.

2. Section 3 – Responses to Requirements – Sections IV, VI, VII, VIII and IX. This section must contain responses to the individual requirements contained in Sections IV, VI, VII, VIII and IX.

E. Financial Proposal

The bidder must submit a Financial Proposal, which must include a narrative response, as dictated by the response column of the financial proposal requirements in Section X – Financial Requirements, as well as tabular responses as dictated by the Financial Tables included in that same section.

Module1: The Financial Proposal must identify all fees to ensure that the Department can accurately determine the full life cycle cost of this procurement. Based on the Department's shift from checks to debit cards, bidders should assume that while the overall number of refunds is expected to remain relatively stable, the breakdown of checks, direct deposit and debit cards will be different. The Department reserves the right to modify the program in the future, in ways that may benefit the Department.

Module 2: The Financial Proposal must identify all fees associated with the procurement of debit card services by the agencies or other Authorized Users. Although additional costs are not anticipated, if there are any additional costs in addition to fees provided by bidder, the bidder must list any additional costs in the Financial Proposal.

Alternate Pricing – If Bidder is awarded both Module 1 and Module 2, it is anticipated that bidder will be able to provide alternate lower pricing for both Module 1 and Module 2 to reflect additional discounting due to the expansion of the scope for the Contractor to both Module 1 and Module 2. The evaluation and award will be completed based upon the individual scores for Module 1 and Module 2.

- F. Bidder's affirmations and/or alternate language proposed for Section II – Performance Standards, Liquidated Damages and Reimbursements and Section XI – Contract Conditions

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Bidders may choose to propose alternate language to the Performance Standards, Liquidated Damages and Reimbursements, as set forth in Section II of this RFP and/or to the negotiable contract conditions, in Section XI.C. of this RFP. Note that Section II of this RFP represents the Department's preferred standards and liquidated damages. The Department will not accept any alternative language to the general control standards; though will consider alternate language for completeness and accuracy standards for refund processing. Note also that while the Department will consider a bidder's alternative language to Performance Standards, Liquidated Damages and Reimbursements or any of the negotiable clauses, the Department does not commit to accepting the proposed changes.

G. Clarifications and Bidder Presentations

The Department and OGS reserves the right to require a bidder to provide clarification and validation of its proposal, to the satisfaction of the Department or OGS, through any means the Department or OGS deems necessary. Failure of a bidder to cooperate with the Department's or OGS' effort to clarify a proposal may result in the proposal being labeled as non-responsive and be given no further consideration. The Department or OGS reserves the right to use information submitted by the bidder in response to the Department's or OGS' request for clarifying information in the course of evaluation and selection under this RFP. Additionally, bidders may be required to participate in individual presentations or to provide written clarification. Such clarifications will be considered in the evaluation process.

H. Proposal Effective Date

All bidders' proposals will be considered valid for twenty four (24) months from the date of the proposal due date.

I. Prime Bidder

The bidder shall act as the prime contractor under the contract, and shall be held solely responsible for contract performance by the bidder, its partners, officers, employees, subcontractors (including vendors) and agents. The bidder shall be responsible for payment of all subcontractors and suppliers, including all third-party service providers contracted by or through the bidder in performance of the contract(s) awarded as a result of this RFP. Where services are supplied by or through the bidder under the contract, it is mandatory for the bidder to assume full integration responsibility for delivery, installation, maintenance, performance and support services for all functions. The bidder shall also be responsible for payment of any license fees, rents or other monies due third parties for services or materials provided under the contract.

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J. Prime Contractor

If a bidder's proposal includes another provider's services (subcontractor), the bidder is required to assume responsibility for those services as prime contractor. The Department and OGS consider only the prime contractor in regard to contractual matters. If services are not provided as required under the contract, the Department's recourse will be against the prime contractor.

K. Subcontracting

The Department for module 1 and OGS for module 2 shall have the right to approve each and every such subcontractor prior to giving written approval to the Contractor to enter into such subcontract. The Department or OGS, as applicable, reserves the right to review and approve other subcontract(s) directly related to the proposed services and/or products for the performance of contractual obligations. All such contract(s) shall contain provisions specifying that:

1. The work performed by the subcontractor must be in accordance with the terms of the contract between the Department or OGS and the prime contractor.
2. Nothing contained in such agreement shall impair the rights of the Department or OGS.
3. Nothing contained under the contract between the Department or OGS and the prime contractor shall create any contractual relationship between any subcontractor and the Department or OGS.
4. The Department or OGS reserves the right to request that a member or members of the subcontractor's staff be removed for work related cause from any work activity performed as a result of the subcontract, provided that such cause is not one which is prohibited by law as a basis for terminating an employee.
5. The prime contractor is solely responsible for subcontractor performance.
6. The Department or OGS has final approval of subcontractors.
7. In the event of contract termination, The Department or OGS reserves the right to have any subcontracts assigned to it on the same terms and conditions as applied to the prime contractor (to the extent consistent with New York State Law).

L. Proposal Security/Freedom of Information Law

During the evaluation process, each Bidder's proposal will be held in strict confidence by Department staff, OGS staff, and other NYS staff assigned to proposal evaluation committees, and will not be disclosed except to the Office of the Attorney General and the Office of the State Comptroller as may be necessary to obtain the approvals of those agencies for the final contract.

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Public inspection of the bids is regulated by the Freedom of Information Law (Article 6 of the New York State Public Officers Law). The bids are presumptively available for public inspection. The Freedom of Information Law provides for exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. The Freedom of Information Law provides that agencies may deny access to records or portions thereof that ...."are trade secrets or submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which, if disclosed, would cause substantial injury to the competitive position of the subject enterprise..." (Public Officers Law §87.2(d)). This exception would be effective both during and after the evaluation process.

Where a Freedom of Information request is made for trade secret or other information which, if disclosed, may cause substantial injury to the competitive position of the Bidder, the Bidder must explain with particularity why the designated portion of the bid meets the statutory criteria for exemption from disclosure.

The provisions of the Freedom of Information Law will also govern the confidentiality of any and all products or services supplied by the successful Contractor.

The ethical standards of the Public of the Public Officers' Code of Ethics (Section 74 of the Public Officers Law) provide that no officer or employee of a State agency shall disclose confidential information that he acquires during the course of his official duties except as otherwise required by law.

These standards control the confidentiality of a Bidder's proposal unless the Department for module 1, or OGS for module 2 grants a petition for records access in accordance with the Freedom of Information Law.

M. Proposal Ownership

All proposals and accompanying documentation become the property of the State of New York and will not be returned.

N. Contractor Selection and Notification of Intent to award

Selection of the successful bidder(s) will be based on best value. The successful bidder(s) will be advised of their selection by the Department for module 1 or OGS for module 2 through the issuance of a "Notification of Intent to Award" letter.

O. Debriefing

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Module 1

Unsuccessful bidders will be notified in writing and may request the opportunity for a debriefing session. Such sessions will be limited to discussions of evaluation results with respect to the bidder's proposal as they apply to the bidder receiving the debriefing.

Module 2

Bidders will be accorded fair and equal treatment with respect to their opportunity for debriefing. Disclosure of the content of competing bids other than statistical tabulations of bids received in response to an RFP, is prohibited prior to contract award. Prior to contract award, OGS shall, upon request, provide a debriefing which would be limited to review of that bidder's proposal or bid. After a contract award, OGS shall, upon request, provide a debriefing to any bidder that responded to the RFP, regarding the reason that the proposal submitted by the unsuccessful bidder was not selected for a contract award. The post award debriefing should be requested by the bidder within thirty days of posting of the contract award on the OGS website.

P. Contract Negotiations and Approval

During contract negotiations, the Department for module 1 and OGS for module 2 must have direct access to the Contractor's personnel who have full authority to make commitments on behalf of the Contractor and sub-contractors. The negotiated contract must conform to the laws of New York State, and will be subject to approval by the Office of the Attorney General and the Office of the State Comptroller. The contract will not be considered finally executed until formal approval has been granted by the Office of the Attorney General and the Office of the State Comptroller. The RFP, the Contractor's proposal, and all associated modifications and clarifications will be made part of the negotiated contract.

**The Contractor(s) must sign a contract within 30 days of award, and if the Contractor fails to do so, the Department reserves the right to begin negotiations with the second rated bidder.**

Q. Amendments

Amendments to the contract awarded as a result of this RFP will not be effective until approved by the Office of the Attorney General and the Office of the State Comptroller, where necessary.

R. Bid Protest Policy

The Department's procedures for handling protests of bid awards are set forth in Appendix C of this RFP.



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S. Bid Solicitation

This RFP is a solicitation to bid, not an offer of a contract.

T. Issuing Office

This RFP is issued by the Department and OGS, which is responsible for all requirements stated herein and for evaluation of all proposals submitted as applicable to Module 1 and Module 2 respectively.

U. Liability

The State of New York is not liable for any costs incurred by a bidder in the preparation and production of any proposal, or for any work performed prior to the final execution of a contract.

V. Reserved Rights

The Department reserves the right to:

1. Disqualify a bidder from receiving an award if such bidder has previously failed to perform satisfactorily in connection with public bidding or contract(s) or is deemed otherwise not responsible.
2. Reject any or all proposals received in response to this RFP and to reissue modified version of this RFP.
3. Withdraw the RFP (in whole or in part).
4. Make an award under this RFP (in whole or in part including award by module).
5. Use the proposal, information obtained through site visits, management interviews and the Department's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the Department's request for clarifying information in the course of evaluation and selection under this RFP.
6. Change any of the scheduled dates stated herein.
7. Develop and implement program enhancements in-house or by entering into agreements with other third party providers. If the Department does not select the contractor(s) to develop and/or implement a program enhancement, the contractor(s) must be willing to work in good faith with the Department and/or any other involved party of parties to develop the requested program enhancements. Should the Department determine that enhancement services being provided by a third party does not meet the Department's expectations, the Department reserves the right to begin negotiations with the Contractor(s) to provide such services.
8. Eliminate any mandatory specification that cannot be complied with by all of the bidders.
9. Determine a tie-breaking mechanism for award of the contract based upon an in-house established methodology which serves the best interest of the State.

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10. Negotiate with the successful bidder within the scope of the RFP in the best interests of the State; and conduct contract negotiations with the next eligible responsible bidder should the Department be unsuccessful in negotiating an agreement with the selected bidder within a time frame acceptable to the Department. Such time frame is to be determined solely by the Department based on the best interests of the State.

W. News Releases

Public announcements or news releases pertaining to the selection of the Contractor or award of a contract must not be made without prior written approval from the Department for Module 1 or OGS for Module 2. Such approval shall not be granted until a finally executed and approved contract is in place.

## SECTION IV – QUALIFYING REQUIREMENTS

### MODULE 1 – PIT Controlled Disbursement and Direct Deposit

An initial review will determine if a bidder meets the minimum qualifications necessary to bid as stated in this Section. A bidder not meeting such minimum qualifications will be disqualified without further evaluation.

REQUIREMENT	RESPONSE
<b>1.0 Technical Qualifications</b>	Affirm understanding of, and agreement with requirements 1.1 and 1.2 below. The bidder must provide a detailed description of how each requirement will be met, including, but not limited to the specific details identified below.
<p>1.1</p> <p>The Contractor must be a state or federally chartered commercial bank with at least one branch in New York State (see Section VII – Program Development and Support) or a document processor subcontracting with such a commercial bank and must possess the technical qualifications to develop, implement and operate the program defined herein.</p>	<p>Respond to 1.1 by providing, at a minimum, the following information:</p> <ol style="list-style-type: none"> <li>1. Statement of capacity and willingness of the Contractor to perform the work set forth in Section VI - Functional Requirements, and Section VII - Program Development and Support Requirements, regardless of any contingencies which may occur.</li> <li>2. Evidence of the bidder’s recent experience in providing services such as those required by this RFP and of comparable scope. Such evidence should include: <ol style="list-style-type: none"> <li>a. Description of the project(s) (e.g., client served, application, daily volumes, and duration).</li> <li>b. Names and telephone numbers of client staff who administered the bidder’s contract (s) and/or supervised the bidder during the course of the project. These persons may be contacted in order to validate bidder’s</li> </ol> </li> </ol>

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REQUIREMENT	RESPONSE
	<p>experience.</p> <p>c. Description of any activities in which the Contractor is engaged which may constitute a conflict of interest to this program.</p>
<p><b>2.0 Financial Stability Conditions</b></p>	<p>Affirm understanding of and agreement with requirements 2.1 through 2.2 below. The bidder must provide a detailed description of how each requirement will be met, including, but not limited to the specific details identified below.</p>
<p>2.1</p> <p>The primary Bidder, and a commercial bank acting as a subcontractor for depository bank services (commercial bank subcontractor), if applicable, must be a financially stable entity(ies), such that it may initiate and perform its obligations through the duration of the project. The commercial bank, acting as primary Bidder or as a subcontractor, must have a LACE Financial Rating of at least C-. Bidders not meeting this minimum qualification will be disqualified without further consideration. In addition, bidders, or their associated bank, must maintain a LACE Financial Rating of at least C- throughout the bid evaluation process. After the bid evaluation, if the highest scoring Bidder has not maintained its LACE Financial Rating of at least C-, as published in the most current issue of LACE Financial Rating, the Department will proceed to the next highest-scoring Bidder.</p> <p>The Department will not enter into a contract with any entity who cannot demonstrate itself to be financially stable and capable of initiating and performing its obligations throughout the duration of the contract. The Department will conduct an evaluation of the bidder’s financial stability which</p>	<p>Respond to 2.1 by providing, at a minimum, the following information:</p> <p><b>Financial Data</b></p> <p>Proof of financial stability, as set forth in the requirements listed below:</p> <p>The bidder and the commercial bank acting as sub contractor, if applicable, must submit proof of financial stability required for their particular organizational structures as set forth in the requirements listed in paragraphs below. Audited/reviewed financial statements, required where indicated below, must have been prepared by a CPA in accordance with GAAP. All required information must be provided for any predecessor company within the last three years and any other subsidiary, affiliate, and/or related company requested by the Department. Any additional information requested must be submitted.</p> <p>1. If the bidder, and the commercial bank acting as a sub contractor, if applicable, is a subsidiary of a parent company that is publicly held, the bidder must comply with the preceding requirements by either (a) submitting separate, audited/reviewed,</p>

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REQUIREMENT	RESPONSE
<p>will include, but not be limited to, a review of the bidder’s equity position, liquidity, profitability trends, and future prospect for financial growth. The financial stability evaluation will also include a review of the entity’s officers and management team, its organizational structure and the financial and operating relationship between business units and divisions.</p> <p>As a condition of any resulting contract, the Contractor must continue to evidence financial stability. The on-going financial stability of the Contractor will be evaluated based upon criteria similar to that used in the evaluation process. Annual financial statements prepared by an accountant in accordance with GAAP will be required to be submitted for review to the Department within ninety days of the fiscal year end. The annual financial statements will be required for the Contractor, as well as any of its subsidiaries or parent companies. Any material change in ownership of the Contractor, or material financial change of the Contractor, will require a reevaluation of the contract in its entirety by the Department.</p>	<p>annual financial statements for the parent and subsidiary for the last three years OR (b) by submitting audited/reviewed, annual financial statements for the parent for the last three years, unaudited/ internal annual financial statements for the subsidiary for the last three years and the spreadsheet(s) used for consolidation.</p> <p>In addition to 1(a) or (b) above, the most recent interim financial statements (audited, reviewed, or unaudited/internal) are required for both the parent and subsidiary.</p> <p>2. If the bidder, and the commercial bank acting as sub contractor, if applicable, is a subsidiary of a parent company that is privately held, the bidder must either (a) comply with the requirement outlined in paragraph one OR (b) submit separate annual, unaudited/internal company financial statements for both the parent and subsidiary for the last three years, a separate Dunn and Bradstreet Comprehensive Report (dated within 21 days of bid submittal) for both the parent and bidder, and a statement explaining why annual, audited/reviewed statements are not available.</p> <p>In addition to 2 (a) or (b) above, the most recent interim financial statements (audited, reviewed, or unaudited/ internal) are required for both the parent and subsidiary.</p> <p>3. If the bidder and the commercial bank acting as sub contractor, if applicable, is a publicly held company and is not a subsidiary of a parent company, it must provide audited or reviewed annual financial statements for the last three years. Plus, the most recent interim financial statements (audited, reviewed, or unaudited/internal) are required.</p>

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REQUIREMENT	RESPONSE
	<p>4. If a bidder and the commercial bank acting as sub contractor, if applicable, is a privately held company and is not a subsidiary of a parent company, it must either (a) fulfill the requirements set forth in paragraph three above or (b) provide annual, unaudited/internal company financial statements for the last three years, a Dunn and Bradstreet Comprehensive Report (dated within 21 days of bid submitted) and a statement explaining why annual audited/reviewed statements are not available.</p> <p style="padding-left: 40px;">In addition to 4 (a) or (b) above, the most recent interim financial statements (audited, reviewed, or unaudited/internal) are required.</p> <p>5. If the bidder is not a bank, the bidder must provide the name and phone number of a contact at its primary bank in order for a reference to be obtained as part of the financial stability evaluation.</p> <p>6. The bidder and the commercial bank acting as sub contractor, if applicable, must provide documentation attesting to any significant line(s) of credit that are available to the bidder. This documentation must include information identifying the source of such lines and detailing the maximum credit amount(s) available to the bidder, outstanding balance(s), and current amount(s) available.</p> <p>7. The bidder and the commercial bank acting as sub contractor, if applicable, must indicate whether or not it guarantees the debt of any other entity.</p> <p>8. If the bidder and the commercial bank acting as sub contractor, if applicable, is a subsidiary of a parent</p>

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REQUIREMENT	RESPONSE
	<p>company, the bidder must explain, in detail, the inter-company financial relationship between the parent company and the bidder. The bidder must indicate if the parent company guarantees the debt of the bidder, or if the bidder guarantees the debt of the parent company.</p> <p>The Bidder and all prospective subcontractors</p> <p><b>Organizational Data</b></p> <p><b>At a minimum, the bidder and the commercial bank acting as sub contractor must provide:</b></p> <ol style="list-style-type: none"> <li>1. Organizational charts, including a listing and detailed description of:           <ol style="list-style-type: none"> <li>a. The bidder’s primary business units and divisions.</li> <li>b. Key executives.</li> <li>c. Any and all subsidiaries.</li> <li>d. Any and all minority interests, joint ventures or other type of business affiliations.</li> </ol> </li> <li>2. Brief biographies of its key officers and management.</li> </ol>

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REQUIREMENT	RESPONSE
<p>2.2</p> <p>The bidder must agree to allow the Department to perform a financial stability analysis, during bid evaluation.</p> <p><u>Basis of Financial Stability Evaluation:</u></p> <p>The Department will conduct a standardized evaluation of the financial statements, or equivalent. Bidder’s financial information will be evaluated in a similar fashion to the process a bank would utilize to evaluate financial transactions. Each proposal will be rated on the aggregate of factors to include, at a minimum, the following:</p> <ul style="list-style-type: none"> <li>A. Strength of balance sheet.</li> <li>B. Consistency and strength of earnings and cash flow (trend analysis).</li> <li>C. Prospects for future earnings.</li> <li>D. Comparison of bidder’s financial information to industry statistics as provided on the customary suitability analysis (see above).</li> <li>E. Credit history: external sources will be utilized to determine if a bidder is meeting its credit obligations in a prescribed manner.</li> <li>F. Review of the LACE financial rating.</li> </ul>	



## SECTION IV – QUALIFYING REQUIREMENTS

### MODULE 2 – Debit Cards

An initial review will determine if a bidder meets the minimum qualifications necessary to bid as stated in this Section. A bidder not meeting such minimum qualifications will be disqualified without further evaluation.

REQUIREMENT	RESPONSE
<b>1.0 Technical Qualifications</b>	Affirm understanding of, and agreement with requirements 1.1 and 1.2 below. The bidder must provide a detailed description of how each requirement will be met, including, but not limited to the specific details identified below.
<p>1.1</p> <p>The Contractor must be a state or federally chartered commercial bank with at least one branch in New York State (see Section VII – Program Development and Support) or a document processor subcontracting with such a commercial bank and must possess the technical qualifications to develop, implement and operate the program defined herein.</p>	<p>Respond to 1.1 by providing, at a minimum, the following information:</p> <ol style="list-style-type: none"> <li>1. Statement of capacity and willingness of the Contractor to perform the work set forth in Section VI - Functional Requirements, and Section VII - Program Development and Support Requirements, regardless of any contingencies which may occur.</li> <li>2. Evidence of the bidder’s recent experience in providing services such as those required by this RFP and of comparable scope. Such evidence should include: <ol style="list-style-type: none"> <li>a. Description of the project(s) (e.g., client served, application, daily volumes, and duration).</li> <li>b. Names and telephone numbers of client staff who administered the bidder’s contract (s) and/or supervised the bidder during the course of the project.</li> </ol> </li> </ol>

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REQUIREMENT	RESPONSE
	<p>These persons may be contacted in order to validate bidder's experience.</p> <p>c. Description of any activities in which the Contractor is engaged which may constitute a conflict of interest to this program.</p> <p>3. The Bidder and all prospective subcontractors must provide a minimum of three, and a maximum of five, references for Financial Services Processing and Transaction Interfaces including contact name, current phone number, address of customer or client account and a brief description of the scope of services performed and the time period the work was performed. The order of preference for the types of projects for the references is: large governmental entities, large commercial entities, small governmental entities and small commercial entities.</p>
<p>1.2 The Bidder must affirm that it meets all PCI DSS standards and that it is authorized by the appropriate associations, networks and other necessary organizations to provide Financial Services for Debit Cards (On-Line and Off-Line).</p>	<p>The Bidder must respond with an affirmation that it meets all PCI DSS standards and list all appropriate associations, networks or necessary organizations.</p>
<p><b>2.0 Financial Stability Conditions</b></p>	<p>Affirm understanding of and agreement with requirements 2.1 through 2.2 below. The bidder must provide a detailed description of how each requirement will be met, including, but not limited to the specific details identified below.</p>
<p>2.1</p> <p>The primary Bidder, and a commercial bank acting as a subcontractor for depository bank services</p>	<p>Respond to 2.1 by providing, at a minimum, the</p>

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REQUIREMENT	RESPONSE
<p>(commercial bank subcontractor), if applicable, must be a financially stable entity(ies), such that it may initiate and perform its obligations through the duration of the project. The commercial bank, acting as primary Bidder or as a subcontractor, must have a LACE Financial Rating of at least C-. Bidders not meeting this minimum qualification will be disqualified without further consideration. In addition, bidders, or their associated bank, must maintain a LACE Financial Rating of at least C- throughout the bid evaluation process. After the bid evaluation, if the highest scoring Bidder has not maintained its LACE Financial Rating of at least C-, as published in the most current issue of LACE Financial Rating, the Department will proceed to the next highest-scoring Bidder.</p> <p>OGS will not enter into a contract with any entity who cannot demonstrate itself to be financially stable and capable of initiating and performing its obligations throughout the duration of the contract. OGS will conduct an evaluation of the bidder's financial stability which will include, but not be limited to, a review of the bidder's equity position, liquidity, profitability trends, and future prospect for financial growth. The financial stability evaluation will also include a review of the entity's officers and management team, its organizational structure and the financial and operating relationship between business units and divisions.</p> <p>As a condition of any resulting contract, the Contractor must continue to evidence financial stability. The on-going financial stability of the Contractor will be evaluated based upon criteria similar to that used in the evaluation process. Annual financial statements prepared by an accountant in accordance with GAAP will be</p>	<p>following information:</p> <p><b>Financial Data</b></p> <p>Proof of financial stability, as set forth in the requirements listed below:</p> <p>The bidder and the commercial bank acting as sub contractor, if applicable, must submit proof of financial stability required for their particular organizational structures as set forth in the requirements listed in paragraphs below. Audited/reviewed financial statements, required where indicated below, must have been prepared by a CPA in accordance with GAAP. All required information must be provided for any predecessor company within the last three years and any other subsidiary, affiliate, and/or related company requested by OGS. Any additional information requested must be submitted.</p> <ol style="list-style-type: none"> <li>1. If the bidder and the commercial bank acting as sub contractor, if applicable, is a subsidiary of a parent company that is publicly held, the bidder must comply with the preceding requirements by either (a) submitting separate, audited/reviewed, annual financial statements for the parent and subsidiary for the last three years OR (b) by submitting audited/reviewed, annual financial statements for the parent for the last three years, unaudited/ internal annual financial statements for the subsidiary for the last three years and the spreadsheet(s) used for consolidation.</li> </ol> <p>In addition to 1(a) or (b) above, the most recent interim financial statements (audited, reviewed, or unaudited/internal) are required for both the parent and subsidiary.</p> <ol style="list-style-type: none"> <li>2. If the bidder and the commercial bank acting as sub</li> </ol>

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REQUIREMENT	RESPONSE
<p>required to be submitted for review to OGS within ninety days of the fiscal year end. The annual financial statements will be required for the Contractor, as well as any of its subsidiaries or parent companies. Any material change in ownership of the Contractor, or material financial change of the Contractor, will require a reevaluation of the contract in its entirety by OGS.</p>	<p>contractor, if applicable, is a subsidiary of a parent company that is privately held, the bidder must either (a) comply with the requirement outlined in paragraph one OR (b) submit separate annual, unaudited/internal company financial statements for both the parent and subsidiary for the last three years, a separate Dunn and Bradstreet Comprehensive Report (dated within 21 days of bid submittal) for both the parent and bidder, and a statement explaining why annual, audited/reviewed statements are not available.</p> <p>In addition to 2 (a) or (b) above, the most recent interim financial statements (audited, reviewed, or unaudited/ internal) are required for both the parent and subsidiary.</p> <p>3. If the bidder and the commercial bank acting as sub contractor, if applicable, is a publicly held company and is not a subsidiary of a parent company, it must provide audited or reviewed annual financial statements for the last three years. Plus, the most recent interim financial statements (audited, reviewed, or unaudited/internal) are required.</p> <p>4. If a bidder and the commercial bank acting as sub contractor, if applicable, is a privately held company and is not a subsidiary of a parent company, it must either (a) fulfill the requirements set forth in paragraph three above or (b) provide annual, unaudited/internal company financial statements for the last three years, a Dunn and Bradstreet Comprehensive Report (dated within 21 days of bid submitted) and a statement explaining why annual audited/reviewed statements are not available.</p> <p>In addition to 4 (a) or (b) above, the most recent interim financial statements (audited, reviewed, or</p>

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REQUIREMENT	RESPONSE
	<p>unaudited/internal) are required.</p> <p>5. If the bidder is not a bank, the bidder must provide the name and phone number of a contact at its primary bank in order for a reference to be obtained as part of the financial stability evaluation.</p> <p>Bidders must also provide:</p> <p>6. The bidder and the commercial bank acting as sub contractor, if applicable, must provide documentation attesting to any significant line(s) of credit that are available to the bidder. This documentation must include information identifying the source of such lines and detailing the maximum credit amount(s) available to the bidder, outstanding balance(s), and current amount(s) available.</p> <p>7. The bidder and the commercial bank acting as sub contractor, if applicable, must indicate whether or not it guarantees the debt of any other entity.</p> <p>8. If the bidder and the commercial bank acting as sub contractor, if applicable, is a subsidiary of a parent company, the bidder must explain, in detail, the inter-company financial relationship between the parent company and the bidder. The bidder must indicate if the parent company guarantees the debt of the bidder, or if the bidder guarantees the debt of the parent company.</p> <p><b>Organizational Data</b></p> <p><b>At a minimum, the bidder and the commercial bank acting as sub contractor must provide:</b></p> <p>1. Organizational charts, including a listing and detailed description of:</p>

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	<ol style="list-style-type: none"> <li>a. The bidder’s primary business units and divisions.</li> <li>b. Key executives.</li> <li>c. Any and all subsidiaries.</li> <li>d. Any and all minority interests, joint ventures or other type of business affiliations.</li> </ol> <p>2. Brief biographies of its key officers and management.</p>
<p>2.2</p> <p>The bidder must agree to allow the Department, on behalf of OGS, to perform a financial stability analysis, during bid evaluation.</p> <p><u>Basis of Financial Stability Evaluation:</u></p> <p>The Department, on behalf of OGS, will conduct a standardized evaluation of the financial statements, or equivalent. Bidder’s financial information will be evaluated in a similar fashion to the process a bank would utilize to evaluate financial transactions. Each proposal will be rated on the aggregate of factors to include, at a minimum, the following:</p> <ol style="list-style-type: none"> <li>1. Strength of balance sheet.</li> <li>2. Consistency and strength of earnings and cash flow (trend analysis).</li> <li>3. Prospects for future earnings.</li> <li>4. Comparison of bidder’s financial information to industry statistics as provided on the customary suitability analysis (see above).</li> <li>5. Credit history: external sources will be utilized to determine if a bidder is meeting its credit obligations in a prescribed manner.</li> <li>6. Review of the LACE financial rating.</li> </ol>	

## **SECTION V – EVALUATION PROCESS**

Pursuant to Article XI of the State Finance Law, the basis for an award of a contract(s) pursuant to this RFP is a best value offer which means that the proposal “optimizes quality, cost and efficiency, among responsive offerers” (State Finance Law, Sec. 163), and which is consistent with the best interests of the State of New York.

### **MODULE 1 – PIT Controlled Disbursement and Direct Deposit**

#### **A. Evaluation Process Overview**

An evaluation team comprised of Department staff representing applicable programmatic and administrative units will be organized into separate sub-teams, one for technical evaluation and one for financial evaluation.

The evaluation will be based on an assessment of the following:

1. Technical Proposal.
2. Financial Proposal.
3. Bidder’s qualifications, based on technical and financial stability conditions included in Section IV – Qualifying Requirements.
4. If deemed necessary by the Department:
  - a. On-site evaluation of the bidder’s operations and proposed technology applications as applicable.
  - b. Interviews with and presentations by the bidder’s proposed management team, including appropriate executives and technical specialists.

#### **B. Evaluations**

1. Bidder Qualification and Responsibility Review

An initial review will determine if a bidder meets the minimum qualifications necessary to bid as stated in Section IV – Qualifying Requirements. A bidder that does not meet such minimum qualifications will be removed from further consideration.

2. Technical Evaluation: 30 points

The Bidder’s responses to individual functional (Section VI); program development and support (Section VII); implementation (Section VIII); Bidder’s affirmations and/or alternate language proposed for performance standards, liquidated damages and reimbursements (Section II) and contract conditions (Section XI) and cash management (Section IX) requirements will be

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evaluated as part of the Technical Evaluation. A failure to meet a mandatory requirement may lead to disqualification of a bidder's proposal.

The technical proposals are evaluated based on a hierarchical review process. Unless otherwise indicated all requirements are considered to be mandatory. Failure to meet a requirement may lead to disqualification of a bidder's proposal. Evaluation of Section IX will be finalized at this point.

The technical evaluation scoring process will continue as follows:

- a. Functional Review (Section VI) - At the function level (e.g., unmatched items, file transmissions, etc.), bidder responses will be evaluated for comprehensiveness, effectiveness, flexibility and control.
- b. Program Development and Support Review (Section VII) - At the topic level (e.g., processing site and electronic funds transfer site origination, internal controls and security etc.), bidder responses will be evaluated for comprehensiveness, effectiveness, flexibility and control.
- c. Integration Review - At this step in the evaluation process, the teams will evaluate the bidder's proposal based on the following:
  - i. Integration of workflow, systems, functional approaches and resources for the proposed program.
  - ii. Appropriateness of any proposed technologies.
  - iii. If the performance standards can be met.
  - iv. The bidder's ability to manage the project.
  - v. Bidder's affirmations and/or alternate language proposed for Section II – Performance Standards, Liquidated Damages and Reimbursements and for Section XI – Contract Conditions (see Footnote<sup>1</sup> below) of this RFP.

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<sup>1</sup> The Performance Standards, Liquidated Damages and Reimbursements, as set forth in Section II of this RFP, represent the Department's preferred standards and liquidated damages. In the event a bidder provides specific alternative language to the Performance Standards, Liquidated Damages and Reimbursements, such alternative language will be evaluated utilizing a scaled rating whereby an affirmation of the Department's standard and/or liquidated damage receives the highest rating and the maximum deviation (based on the minimum allowed values stated below) from a standard or liquidated damage receives the lowest rating. The minimum allowed values are as follows:

1) For Performance Standards: the Department will not accept any alternative language to general control standards. The Department will allow alternate language for timeliness standards on data and image output of up to one business day. The Department will allow alternate language for completeness and accuracy standards for refund processing, however, the accuracy standards cannot be less than 98%; and,

2) For Liquidated Damages, the Department will not accept any alternative language that reduces a liquidated damage by more than 25% for specified dollar damages (e.g.; \$1,000).

3) The Department will not accept percentage reductions to the reimbursements.

A bid which does not meet the minimum allowed values will be subject to disqualification.

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- vi. Bidder's proposed implementation plan (Section VIII – Implementation Requirements of this RFP);

3. Financial Evaluation: 70 points

Financial proposals will be evaluated based on the life cycle cost for the base term of the resultant contract (see Section I - Introduction, E - Contract Duration, of this RFP for applicable base term), as reflected by the direct fees proposed for development and operations. Based on the Department's shift from checks to debit cards bidders should assume that the overall number of refunds will remain, but that the breakdown will be different.

**D. Proposal Scoring**

The Financial Evaluation component of each proposal will be valued at 70 points and the Technical Evaluation component will be valued at 30 points for a total of 100 possible points. The table below summarizes the evaluation point distribution:

Evaluation Component	Points
Financial Evaluation	70 points
Technical Evaluation	30 points
TOTAL	100 points

**E. Final Ranking/Contract Award**

Upon completion of the Technical, Management and Financial Evaluation, the points are combined. A LACE Financial Rating review will be performed on the highest-scoring bidder. If that Bidder has not maintained a Financial Rating of at least C-, as published in the most current issue of LACE Financial Rating, the Department will proceed to the next highest scoring bidder. Award will be made to the highest-scoring Bidder that maintains a LACE rating of at least C-.

## **SECTION V – EVALUATION PROCESS**

### **MODULE 2 – Debit Cards**

#### **A. Evaluation Process Overview**

An evaluation team comprised of OGS staff and other Agency staff will be organized into separate sub-teams, one for technical evaluation and one for financial evaluation.

The evaluations will be based on assessments of the following:

- 1) Technical Proposal.
- 2) Financial Proposal.
- 3) Bidder's affirmations and/or alternate language proposed for Section II – Performance Standards Section XI – Contract Conditions.
- 4) Bidder's qualifications, based on technical and financial stability conditions included in Section IV – Qualifying Requirements.
- 5) If deemed necessary by OGS:
  - a) Evaluation of the bidder's operations and proposed technology applications as applicable.
  - b) Interviews with and presentations by the bidder's proposed management team, including appropriate executives and technical specialists.

#### **B. Evaluations**

##### **1. Bidder Qualification and Responsibility Review**

An initial review will determine if a bidder meets the minimum qualifications necessary to bid as stated in Section IV – Qualifying Requirements. A bidder that does not meet such minimum qualifications will be disqualified.

##### **2. Technical Evaluation: 40 points**

The Bidder's responses to individual functional (Section VI); program development and support (Section VII); implementation (Section VIII); and cash management (Section IX) requirements will be evaluated as part of the Technical Evaluation. A failure to meet a requirement may lead to disqualification of a bidder's proposal.

The technical evaluation scoring process will continue as follows:

- a. Functional Review (Section VI) –
- b. Program Development and Support Review (Section VII) -

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- c. Integration Review - At this step in the evaluation process, the teams will evaluate the bidder's proposal based on the following:
- i. Integration of workflow, systems, functional approaches and resources for the proposed program.
  - ii. Appropriateness of any proposed technologies.
  - iii. If the performance standards can be met.
  - iv. The bidder's ability to manage the project.
  - v. Bidder's affirmations and/or alternate language proposed for Section II – Performance Standards, Liquidated Damages and Reimbursements and for Section XI – Contract Conditions (see Footnote<sup>2</sup> below) of this RFP.

3. Financial Evaluation: 60 points

Financial proposals will be evaluated based on the total fees; it is not anticipated that there will be any costs beyond fees noted in the proposal. If there are any additional costs, these costs must also be noted in the proposal.

**C. Proposal Scoring**

The Financial Evaluation component of each proposal will be valued at 60 points and the Technical Evaluation component will be valued at 40 points for a total of 100 possible points. The table below summarizes the evaluation point distribution:

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<sup>2</sup> The Performance Standards, Liquidated Damages and Reimbursements, as set forth in Section II of this RFP, represent the Department's preferred standards and liquidated damages. In the event a bidder provides specific alternative language to the Performance Standards, Liquidated Damages and Reimbursements, such alternative language will be evaluated utilizing a scaled rating whereby an affirmation of the Department's standard and/or liquidated damage receives the highest rating and the maximum deviation (based on the minimum allowed values stated below) from a standard or liquidated damage receives the lowest rating. The minimum allowed values are as follows:

1) For Performance Standards: the Department will not accept any alternative language to general control standards. The Department will allow alternate language for timeliness standards on data and image output of up to one business day. The Department will allow alternate language for completeness and accuracy standards for refund processing, however, the accuracy standards cannot be less than 98%; and,

2) For Liquidated Damages, the Department will not accept any alternative language that reduces a liquidated damage by more than 25% for specified dollar damages (e.g.; \$1,000).

3) The Department will not accept percentage reductions to the reimbursements.

A bid which does not meet the minimum allowed values will be subject to disqualification.

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Evaluation Component	Points
Financial Evaluation	60 points
Technical Evaluation	40 points
<b>TOTAL</b>	<b>100 points</b>

**D. Final Ranking/Contract Award**

Upon completion of the Technical and Financial Evaluation, the points are combined. A LACE Financial Rating review will be performed on the highest-scoring bidder. If that Bidder has not maintained a Financial Rating of at least C-, as published in the most current issue of LACE Financial Rating, the Department will proceed to the next highest scoring bidder. Award will be made to the highest-scoring Bidder that maintains a LACE rating of at least C-.

## Section - VI Functional Requirements

### Module 1 – PIT Controlled Disbursement and Direct Deposits

FUNCTIONAL REQUIREMENT	REQUIRED RESPONSE
<b>A.1.0 CONTROLLED DISBURSEMENT SERVICES</b>	The Contractor must affirm understanding of and agreement with requirements A.1.1–A.1.2. In addition, provide the individual requirement detail listed below.
A 1.1  The Contractor must provide customer service to the Department in order to effectively and timely address issues related to any and all services required in this RFP.	A. 1.1  Describe the proposed customer services.
A.1.2  The Contractor must provide on a monthly basis, to the Department, transit and routing number verification information in an agreed upon electronic file format.  The Contractor must also provide the Department, on an annual basis, the NACHA Rules, with periodic updates, as appropriate.	A.1.2  Identify the proposed timing of and method for delivery of updates to the transit and routing number verification information (e.g., available to the Department within 15 days after the update), as well as the means of providing the Department with the annual NACHA Rules publication and any periodic updates.
<b>B. 1.0 DRAFT PROCESSING</b>	The Contractor must affirm understanding of and agreement with requirements B.1.0 – B1.23 in addition, provide the individual requirement detail listed below.
B. 1.1  The Contractor must establish a joint custody main concentration account and three joint custody zero balance sub-accounts for payment of PIT Refunds. It is desirable that the accounts be	B. 1.1  Describe the proposed funding of the accounts and identify any additional account requirements, including the location of the accounts.

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within New York State.	
<p>B. 1.2</p> <p>The Contractor must establish a sole custody main concentration (exchange) account and an undetermined number of sole custody zero balance sub accounts, to reissue drafts on forgery cases for which reimbursement has been received. The <b>Department must receive credit</b> to the exchange account when a forgery case is resolved and associated documentation indicating to which case the credit pertains.</p>	<p>B. 1.2</p> <p>Describe the proposed method for providing notification to the Department of forgery credits.</p>
<p>B. 1.3</p> <p>The Contractor must provide the Department and NYS OSC daily statements for sub-accounts due on the next business day and monthly account statements for the main concentration account within two business days of the end of the month.</p>	<p>B. 1.3</p> <p>Describe the proposed method of reporting daily and monthly account statements to the Department and NYS OSC.</p>
<p>B.1.4 Account Monitoring</p> <p>The Contractor must provide the Department and NYS OSC with account monitoring access through an intra-day online balance reporting system, retrievable in a BAI-2 format. The intra-day online balance reporting system must report daily account activity, including transaction codes, for all credit and debit activity.</p> <p>The Contractor must also provide the Department and NYS OSC with previous day reporting through an online system. The previous day reporting system must report previous day account activity, including transaction codes, for all credit and debit activity.</p>	<p>B. 1.4</p> <p>Describe the proposed online reporting system, including the required functionality, as well as any additional standard functionality offered by the bidder. Specifically identify available data access and reporting features. In addition:</p> <ol style="list-style-type: none"> <li>a. Describe the hours of system availability.</li> <li>b. Scheduled downtime and maintenance.</li> <li>c. User access (number of possible users, limitations on usage).</li> </ol>

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<p>Access to transaction history must be maintained and be available for inquiry through online access or client service advisor for a minimum of six months.</p>	
<p><b>B. 1.5 Draft Reimbursement</b></p> <p>The Contractor will be reimbursed by the NYS Office of the State Comptroller (NYS OSC) daily for the total amount of paid drafts through an electronic Federal Funds Wire Transfer on the same business day</p> <p>NYS OSC requires actual dollars and will fund all items presented. Over the counter presentments must be held for next day funding.</p>	
<p><b>B.1.6 Account Reconciliation Processing (ARP) Requirements</b></p> <p>The Contractor must provide the Department with electronic ARP reports in an agreed upon format that will be compatible with MS Excel.</p>	<p><b>B. 1.6</b></p> <p>Describe the proposed ARP system including standard reporting options, frequency of reports, formatting details on such reports, delivery timeframes, and any options for customizing.</p>
<p><b>B. 1.7</b></p> <p>The Contractor must ensure that no costs are assessed against the bank accounts associated with this RFP without the prior written consent of the NYS OSC.</p>	
<p><b>B. 1.8 Draft Issuance Files</b></p> <p>The Contractor must accept separate and multiple issuance files - transmitted for each account (Exhibit B-1 – Draft Issuance File Layout) in such a way so that presentments are matched.</p>	<p><b>B.1.8</b></p> <p>Describe the proposed method for processing the draft issuance files ensuring that next day presentments are not unmatched. Include proposed issuance file receipt cut-off time and the proposed retention period.</p>

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<p>B.1.9 Listing of Paid Drafts</p> <p>The Contractor must create and send daily listings of paid drafts (see Exhibit B - 2 – Paid Draft File Layout) to the Department. This file must not include encoding errors or drafts issued out of other accounts. The Contractor must notify the Department of file delivery.</p>	<p>B.1.9</p> <p>Provide the proposed listings of paid drafts – the timing of the delivery of the paid file to the Department. Also describe the method and timing of notification, as well as the content.</p>
<p>B.1.10 Presented Draft Notification</p> <p>The Contractor must provide NYS OSC with the total dollar amounts of matched presented drafts no later than 10:00 a.m. each business day.</p> <p>The Contractor must <b>not</b> pay any unmatched items without prior DTF approval. The Department will accept estimates on an exception basis. The Contractor should consult with OSC prior to the 10:00 a.m. EST deadline to determine the funding estimate.</p>	<p>B.1.10</p> <p>Describe the proposed process for determining the value of paid drafts (e.g. in-house processing of drafts, use of Federal Reserve services, etc.); for completing the match of presented drafts against the issuance file data; for ensuring that an accurate presentment dollar total and item total is provided to OSC; and for the time frame for notification to OSC.</p>
<p>B.1.11 Positive Pay Exception Items</p> <p>The Contractor must report to the Department any positive pay exception items. The reporting must be for each account, as well as a summary of all accounts.</p> <p>Note: A positive pay exception item is any item that the Contractor cannot reconcile even after manual intervention. Positive pay exception items do not include damaged drafts, cancels or misencoded items. Positive pay exceptions may not include any item accurately identified on an issuance file.</p> <p>The Contractor must notify Treasury electronically, preferably via email, of any positive pay exception</p>	<p>B.1.11</p> <p>Describe the proposed method of reporting all positive pay exception items to the Department as well as the cut off time for Treasury to reconcile such unmatched items and to notify the contractor of the decision.</p>



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<p>items by 10:00 a.m. EST on the business day following presentment.</p>	
<p><b>B.1.12 “On Us” Drafts</b></p> <p>It is desirable for the Contractor to cash “on us” drafts, regardless of whether or not the taxpayer has an account with the Contractor. It is the Department’s preference that the method used to validate taxpayers is as unobtrusive as possible. The Department will not indemnify the Contractor for losses incurred for cashing “on us” drafts.</p>	<p><b>B.1.12</b></p> <p>Describe your policy on cashing “on us” drafts.</p> <p>If the bidder’s policy enables cashing “on us” drafts, provide the procedures and required identification.</p>
<p><b>B.1.13 Payment Cancels</b></p> <p>The Contractor must enable the Department to cancel previously issued payments. Such cancellations must remain in effect until the Department authorizes their removal. The contractor must enable the Department to remove a previously placed cancel, preferably online. The Contractor must notify the Department that the payment has been cancelled or the cancel has been rejected.</p> <p>Note: The Department considers “cancels” to include stops, voids, deletes as well as cancels.</p>	<p><b>B.1.13</b></p> <p>Provide a description of the cancel payment processes, timing and controls, including a description of the notification and/or reporting to the Department that the cancel payment order has been placed (i.e., indicator flag on the online system, report listing, etc.) or rejected. Provide the proposed timing for the cancel payment process.</p>
<p><b>B.1.14 Outstanding Drafts</b></p> <p>At the request of the Department, the Contractor must provide an electronic list of outstanding drafts (excluding cancelled items) issued during the calendar year specified by the Department.</p> <p>The Contractor must, at the request of the Department, remove any outstanding drafts (including cancelled items) issued at least one year prior, as defined in § 102 of the State Finance Law, but not yet presented. A file and report of the</p>	<p><b>B.1.14</b></p> <p>Provide the proposed method of removing certain outstanding drafts, at the request of the Department, and identify the method of reporting such action.</p>

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<p>removed issuances must be sent to the Department.</p> <p>Note: Outstanding drafts are removed in calendar year blocks after the last issuance date for the calendar year has aged at least 12 months. For example, the Department will not request the removal of outstanding drafts for calendar year 2008 before January 1, 2010.</p>	
<p><b>B.1.15 Forgery Affidavit Processing</b></p> <p>The Contractor must process all forgery claims, reimbursing the Department within three business days after notification from the bank of first deposit. The Contractor must credit the main concentration exchange account (see requirement A. 1.3 above) and each credit must identify the claim reference number(s) involved and the contact name and phone number for the bank of first deposit. A weekly status report of all forgery claims will be provided. The Contractor is responsible for complete resolution of forged items.</p>	<p>For B.1.15 Provide:</p> <ul style="list-style-type: none"> <li>a. Affirmation of assumption of complete responsibility for the resolution of forged items.</li> <li>b. A description of the procedures for processing a forgery claim, including a schedule of follow-up activities with banks that have not responded to prior requests. This procedure should clearly define positions of increasing responsibility within the bidder's organization to ensure timely resolution of forgery claims and the average turnaround period for resolution of forgery claims. The bidder must also provide a description of the level of customer service.</li> </ul>
<p><b>B.1.16</b></p> <p>The Contractor must pursue payment of a forged draft with Federal Deposit Insurance Corporation (FDIC) or Resolution Trust Corporation (RTC) if cashing bank has become insolvent.</p>	
<p><b>B.1.17</b></p> <p>The Contractor must provide an online application</p>	<p>For requirement B.1.17</p> <ul style="list-style-type: none"> <li>a. Describe the proposed online</li> </ul>

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<p>with access for the Department and NYS OSC including, but not limited to the following functionality:</p> <ul style="list-style-type: none"> <li>a. Notification of total presented drafts.</li> <li>b. Notification of paid drafts.</li> <li>c. Inquiry into the status of an issued draft.</li> <li>d. Draft cancellation status.</li> <li>e. Access to images of all paid drafts by, at a minimum, draft number. In addition, it would be desirable to have additional access to the images by taxpayer name, draft amount, issuance date, paid date, and date ranges.</li> </ul> <p>Access to this data must be available for at least seven years, of which thirty-six months (from the paid date) worth must be accessible via the online application.</p>	<p>capabilities, including, but not limited to:</p> <ul style="list-style-type: none"> <li>1) Access hours.</li> <li>2) Access options, including any limitations (i.e., maximum number of characters allowed in fields, etc.)</li> <li>3) Data retention and retrieval timeframe</li> </ul> <p>b. Provide proposed sample screens and reports.</p> <p>Describe any necessary equipment and connectivity for access.</p>
<p>B.1.18</p> <p>The Contractor must maintain original paper drafts or paper IRD's when available for at least one year from the paid date, and must provide requested original drafts within one business day (of the agreed upon cut-off time).</p>	<p>B.1.18</p> <p>Provide a detailed description of the proposed paper draft storage location and associated security controls. Also, describe the proposed process for providing original paid drafts to the Department, including the proposed request cut-off time.</p>
<p>B.1.19</p> <p>The Contractor must provide for the confidential destruction of original paper drafts or paper IRD's after the required one year retention period.</p>	<p>B.1.19</p> <p>Describe the proposed method of destruction.</p>
<p>B. 1.20 DRAFT IMAGE OUTPUT</p>	<p>B 1.20 The Contractor must affirm understanding of and agreement with requirements B.1.21 – B.1.23. In addition, describe the proposed approach including, but</p>

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	<p>not limited to, the following details:</p> <ul style="list-style-type: none"> <li>a. The proposed equipment (hardware) and software to be used.</li> <li>b. Identification of any subcontractors (e.g., application development, etc.)</li> <li>c. The reconciliation process that will guarantee that each draft is imaged and that each image file is included on the Image Control File (see Exhibit C – Image Indexing).</li> </ul>
<p>B. 1.21 The Contractor must provide images (and related indexing) of all drafts (front and back), post endorsement. The indexing approach must ensure that:</p> <ul style="list-style-type: none"> <li>a. There is one multi-page (front and back) TIFF image file for each separate draft.</li> <li>b. Each image file consists of fewer than one billion bytes.</li> </ul> <p>Each image must have a file name consisting of the twelve digit tracking number (the DLN) and a three character suffix (e.g., 123456789112.001 and 123456789112.002). The suffix is to represent the sequential number of images (i.e., a front would be the .001 and the back would be the .002).</p>	
<p>B.1.22 The Contractor must create a corresponding image index file for all scanned images (see Exhibit C – Image Index Layout).</p>	
<p>B.1.23</p>	<p>B.1.23</p>

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<p>The Contractor must bundle the images and their associated header records (see Exhibit C – Image Index Layout) into a ZIP file formatted archive, encrypted using EDE’s public PGP key and transfer the files (FTP put) via the internet to the Department . The images must reconcile to the number of images included in the image index file.</p> <p>The images and related index data must be provided to the Department on the business day following payment.</p>	<p>The Contractor must specify the time of delivery of the image files.</p>
<p><b>C. DIRECT DEPOSIT SERVICES AND PROCESSING</b></p>	<p>The Contractor must affirm understanding of and agreement with requirements C.1.0 – C.1.9. In addition, provide the individual requirement detail listed below.</p>
<p>C.1.1</p> <p>The Contractor will establish and utilize a joint custody main concentration account for the receipt of PIT Refund direct deposit funds from the NYS Office of the State Comptroller. Such funds shall only be released upon the confirmation and authorization to release direct deposits, as described in C.1.2.</p>	
<p>C.1.2</p> <p>The Contractor must enable an agreed upon method for the confirmation and authorization to release direct deposits.</p> <p>The confirmation and authorization to release direct deposit transactions shall be accomplished with a secure, automated, and password protected system. The State requires unique passwords for OSC and the NYS Division of Treasury, who will each assign a security administrator(s). The</p>	<p>C.1.2</p> <p>Describe current ACH authorization and release process.</p>

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<p>security administrators will assign authorizations to transmit or release files. No user shall be allowed to do both.</p> <p>If an entry is returned to the contracting bank, the contracting bank must notify the Department electronically within one business day of the day of receipt.</p>	
<p>C.1.3</p> <p>The Contractor must transmit PIT Refund direct deposits so that funds are available for withdrawal by the taxpayer(s) at the opening of business on the specified dates contained on the data provided by the Department.</p>	<p>C.1.3</p> <p>Provide the proposed back-up time frames to transmit to the ACH network if, for any reason, the initial transmission is not initiated or the transmission fails. Also provide the control structure for the PIT Controlled Disbursement account (i.e., how transfers into/out of the account will be identified and segregated from other ACH Credit transactions).</p>
<p>C.1.4</p> <p>The contractor must provide an acknowledgement file, using the standard NACHA file format.</p>	<p>C.1.4</p> <p>Describe the proposed timeframe and format for the provision of the Acknowledgement file to the Department.</p>
<p>C.1.5</p> <p>The Contractor must provide ACH Credit rejection reports and information (see Exhibit B-4 – Direct Deposit Reject File Layout); including reason codes (based on the most recent publication of the NACHA rules). The return notification must identify the taxpayer by name, identification number, intended recipient, trace number, and other identification information which is mutually agreed upon.</p>	<p>C.1.5</p> <p>Describe the proposed timeframe and format for provision of the ACH Credit rejection reports and information to the Department.</p>

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<p>C.1.6</p> <p>The Contractor must credit ACH Credit rejections to the main PIT Controlled Disbursement account. The dollar value of all returns must be transferred to the Controlled Disbursement Account within 24 hours of receipt of the returned items.</p>	<p>C.1.6</p> <p>Provide the proposed timeframe for which the ACH Credit rejections are credited to the main concentration PIT refund account.</p>
<p>C.1.7</p> <p>Upon notification, the Contractor will initiate retrieval actions from those ACH Credit transactions which the Department has deemed to be erroneous.</p>	<p>C.1.7</p> <p>Describe the work flow and provide the procedures to be used to initiate ACH credit retrievals, including, but not limited to:</p> <ul style="list-style-type: none"> <li>a. Customer service.</li> <li>b. Contact phone number.</li> <li>c. Fax number.</li> <li>d. Online service.</li> <li>e. Documentation.</li> <li>f. Timing of events.</li> <li>g. Effects on funding.</li> <li>h. Handling of aged items.</li> </ul> <p>Specify the time frame when reversal actions will be initiated, and any legal impediments, industry requirements, or NACHA rules which will inhibit the ability to retrieve ACH Credits.</p> <p>Indicate whether an attempt will be made to re-initiate the ACH Credit to a corrected taxpayer account or if the ACH Credit retrieval process requires the Department to re-initiate a new ACH Credit transaction to the taxpayer.</p>

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<p>C.1.8 Bulk Cancels or Reversals</p> <p>The Contractor must have the ability to process bulk ACH Credit cancels or reversals.</p>	<p>C.1.8</p> <p>Describe the proposed method for processing bulk ACH Credit cancels and reversals.</p>
<p>C.1.9</p> <p>The Contractor will be required to assist the Department in the resolution of ACH exceptions.</p>	<p>C.1.9</p> <p>Describe the level of support for handling ACH exceptions, including:</p> <ul style="list-style-type: none"> <li>a. Customer service.</li> <li>b. Hours of availability.</li> <li>c. Contractor acts as intermediary or not.</li> <li>d. Systematic method to provide name of taxpayer’s bank, contact name, contact information.</li> <li>e. Average time to report failed transactions to DTF, etc.</li> </ul>



## Section - VI Functional Requirements

### Module 2 – Debit Card

FUNCTIONAL REQUIREMENT	REQUIRED RESPONSE
<b>A.1 Customer Service</b>	
<p>A. 1.1</p> <p>The Contractor must provide customer service to State Agencies, other Authorized Users and Fund Recipients in order to effectively and timely address issues related to any and all Debit Card services required in this RFP.</p>	<p>A. 1.1</p> <p>Describe the proposed customer services</p>
<p>A.1.2</p> <p>The Contractor must provide a dedicated team for the debit card services to DTF and describe how dedicated teams will be established for NYS Agencies and other Authorized Users.</p>	<p>A.1.2</p> <p>Describe the team that will be dedicated to DTF. Describe how a team would be dedicated for future purchases from the centralized contract.</p>
<p>A.1.3</p> <p>The Contractor must provide, at a minimum, toll free telephone customer service, available no less than 7 am through 7pm Eastern time, with, at least, both Spanish and English speaking representatives to all debit card recipients. Such toll free telephone customer service must be at a call center located in the United States.</p>	<p>A.1.3</p> <p>Describe the proposed customer service solution, identifying the hours of availability, the languages supported, and whether customer service assistance will be available in ways other than telephone. Bidder must confirm that there are no additional fees associated with Customer Service contacts.</p>
<p>A.1.4</p> <p>The Contractor must provide dedicated websites for Agency or Authorized User, Fund Recipient, and customer service.</p>	<p>A.1.4</p> <p>Describe ability to meet this requirement.</p>
<p>A.1.5</p> <p>The Contractor must include a method for</p>	<p>A.1.5</p> <p>Describe the method used to transfer calls to the</p>

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transferring customer questions or complaints, that more properly come under the Authorized User's jurisdiction in a customer service oriented fashion.	Authorized User where applicable.
A.2 Business Requirements	
A.2.1  The Contractor must issue branded (MasterCard or Visa) debit cards to Fund Recipients upon notification from the Agency or Authorized User.	A.2.1  Describe the proposed debit card solution, including, but not limited to, its particular brand and ability to provide single load, a reloadable debit card and a stored value card.
A.2.2.  The Contractor must have the ability to issue one card per account with the possibility of two names per card.	A.2.2  Describe ability to comply with this requirement.
A.2.3  The Contractor must have ability to fund individual accounts or multiple accounts at one time.	A.2.3  Describe ability to comply with this requirement.
A.2.4  The Contractor must allow enrollment of Fund Recipients via the Internet.	A.2.4  Describe ability to comply with this requirement.
A.2.5  The Contractor must have system whereby Fund Recipient status can be updated instantaneously via Internet.	A.2.5  Describe ability to comply with this requirement.
A.2.6  Contractor must issue debit cards that allow for	A.2.6  Describe ability to comply with this requirement.

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access to funds via an ATM, with PIN usage.	
A.2.7 Contractor must issue debit cards that can be used at merchant locations for purchases.	A.2.7 Describe ability to comply with this requirement.
A.2.8 Contractor must have ability to issue preloaded cards that may be issued via mail with PIN.	A.2.8 Describe ability to comply with this requirement.
A.2.9 Contractor must have ability to issue Stored Value Debit Cards that may be hand delivered by Authorized User to recipient.	A.2.9 Describe ability to comply with this requirement and how access by Fund Recipient would be obtained (e.g. PIN, signature).
A.2.10 Contractor must have ability to provide equipment necessary to activate Stored Value Debit Cards at Authorized User site.	A.2.10 Describe ability to comply with this requirement. Also, provide listing of available equipment.
A.2.11 The Contractor must issue debit cards which participate in a statewide ATM network, with all counties represented, as well as be accepted at Points of Sale (POS) facilities.	A.2.11 Identify the associated ATM networks and describe, by county, their availability throughout the state. Describe the Point of Sale transaction process.
A.2.12 Contractor must issue debit cards that can be used at Financial Institutions for over the counter transactions, at least three transactions per month at no fee.	A.2.12 Describe ability to comply with this requirement.
A.2.13 The Contractor will establish and utilize a joint	A.2.13 Describe ability to comply with this requirement,

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<p>custody main concentration account for the receipt of PIT Refund Debit Card funds from the NYS Office of the State Comptroller, or in the case of other Authorized Users funding source . Such funds shall only be released upon the confirmation and authorization to release Debit cards, as described in D2.15 and the Authorized User Set Up Form Appendix L.</p>	<p>including any information that would be required by bidder for this process.</p>
<p>A.2.14</p> <p>The Contractor must accept files transmitted from the Authorized User containing the names and addresses of the Fund Recipients, as well as the amount to be credited to the Fund Recipients debit card account.</p>	<p>A.2.14</p> <p>Identify the standard format for such account issuances and indicate where customization is available and what that customization would encompass.</p>
<p>A.2.15</p> <p>The Contractor must enable an agreed upon method for the confirmation and authorization to release debit cards.</p> <p>The confirmation and authorization to release debit card transactions shall be accomplished with a secure, automated, and password protected system. For New York State Agencies, the State requires unique passwords for OSC and the NYS Division of Treasury, who will each assign a security administrator(s). The security administrator(s) will assign authorizations to transmit or release files. No user shall be allowed to do both.</p> <p>If an entry is returned to the contracting bank, the contracting bank must notify the Authorized User electronically within one business day of the day of receipt.</p>	<p>A.2.15</p> <p>Describe current debit card authorization and release process.</p>

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<p>A. 2.16</p> <p>The Contractor must issue debit cards to Fund Recipients within the time period established in the Authorized User Set Up Form, Not to exceed 10 days. Funds are to be released to the accounts when cards are ready for release to the Fund Recipient.</p>	<p>A.2.16</p> <p>Describe the proposed solution for the creation and mailing of a debit card to a designated Fund Recipient. Describe ability to comply with required time frame requests by Authorized Users. Describe the maximum number of cards that can be produced and mailed daily.</p>
<p>A.2.17</p> <p>The Contractor must have the ability to produce debit cards and hold mailing until the Authorized User funds and authorizes the mailing to the Fund Recipients.</p>	<p>A2.17</p> <p>Describe the proposed controls to prevent accidental mailing of cards prior to authorization by the Authorized User.</p>
<p>A.2.18</p> <p>The Contractor must establish a process for Fund Recipients to validate their debit cards in a way that eliminates risk of fraudulent use.</p>	<p>A. 2.18</p> <p>Describe the proposed activation process and fraud protection.</p>
<p>A.2.19</p> <p>The Contractor must credit disbursement errors to the Authorized User's main Disbursement account. The dollar value of all returns must be transferred to the Disbursement Account within 24 hours of receipt of the returned items. Credit disbursement errors made known to the Contractor by the Authorized User, prior to fund release, should not be released. If released, no reversal fees will apply to the Authorized Users.</p>	<p>A.2.19</p> <p>Provide the proposed timeframe for which crediting the disbursement error to the main disbursement account.</p>
<p>A.2.20 Nixie's and Card Reissuance</p> <p>When the Contractor receives a Nixie:</p> <ul style="list-style-type: none"> <li>• must return the name, address, card amount to the Authorized User</li> <li>• transfer the funds from their account back to the PIT Refund Account or the</li> </ul>	<p>A.2.20</p> <p>Describe the process the vendor will utilize to handle the return of undeliverable debit cards</p>

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<p>Authorized users funding source</p> <ul style="list-style-type: none"> <li>• control destroy the debit card</li> </ul>	
<p>A. 2.21 Abandoned Property The Contractor must:</p> <ul style="list-style-type: none"> <li>• After a specified period (e.g, within 11 months of issuance), the vendor should attempt to reach out to recipients who have not activated their debit cards. For debit cards issued in 2011, this contact would need to be completed by July 2012.</li> <li>• After a year, the vendor would: <ul style="list-style-type: none"> <li>○ Must return the name, address, card amount to the Authorized User.</li> <li>○ Transfer funds associated with inactivated debit cards back to the State. For debit cards issued in 2011, this would be required in December 2012. Funds would be deposited into an account specified by OSC.</li> </ul> </li> </ul>	<p>A.2.21</p> <p>Describe the process the vendor will utilize to handle Abandoned Property.</p>
<p>A.2.22</p> <p>Regulation E Compliance - The Contractor's debit card program must be compliant with Federal Reserve Regulation E.</p>	<p>A.2.22</p> <p>Describe how the program is compliant with Regulation E.</p>
<p>A.2.23</p> <p>The Contractor must keep Fund Recipient information under strict confidence.</p>	<p>A.2.23</p> <p>Describe the measures that will be taken to ensure the confidentiality of the Fund Recipients information. Include details of the security package to be used for access control to Fund Recipients information.</p>

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FUNCTIONAL REQUIREMENT	REQUIRED RESPONSE
<p>A.2.24</p> <p>The Contractor must issue and mail debit cards to the Fund Recipients when required.</p>	<p>A.2.24</p> <p>Describe process to issue and mail debit cards.</p>
<p>A.2.25</p> <p>The Contractor must provide reporting to include, but not be limited to: Account change history, research and adjustments, funding status, transaction detail and reconciliation.</p>	<p>A.2.25</p> <p>Describe ability to comply with this requirement, including reporting options available.</p>
<p>A.2.26</p> <p>The Contractor must provide any implementation detail and requirements.</p>	<p>A.2.26</p> <p>Describe any implementation or other set up requirements for OGS and / or Authorized Users.</p>
<p>A.2.27</p> <p>The Contractor must provide a step by step plan for an Authorized User to establish a debit card offering.</p>	<p>A.2.27</p> <p>Describe model plan to establish individual debit card offerings.</p>
<p>A.2.28</p> <p>The Contractor should provide description of any miscellaneous service that they can/will provide.</p>	<p>A.2.28</p> <p>Describe capabilities in this area.</p>
<p>A.2.29</p> <p>The Contractor must issue a debit card that does not expire for at least 12 months from issue.</p>	<p>A.2.29</p> <p>Provide the card expiration policy for Single load, reloadable and stored value cards including the number of months the card is valid, the timing and manner of notice to funds recipients prior to expiration.</p>
<p><b>A.3 Program Benefits</b></p>	
<p>A. 3.1.</p> <p>The Contractor must enable at least three free</p>	<p>A.3.1</p> <p>Identify the number of free ATM withdrawals and</p>

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<p>ATM withdrawals and at least three account/balance inquiries per month. Neither the Fund Recipient nor the Authorized User will be charged for withdrawals transacted at the Bank.</p>	<p>the number of free account/balance inquiries that will be available to Fund Recipients. Also provide details as to other charges that a debit card recipient will be subject to. <b>No cost information is to be provided with this section.</b></p>
<p>A.3.2 The Contractor must provide Fund Recipients instructional materials explaining the proper use of the debit card.</p>	<p>A.3.2 Describe how the instructional needs will be met.</p>
<p>A.3.3 The Contractor must provide detail on procedure for debit card or PIN reissuance.</p>	<p>A.3.3 Describe process for both debit card and PIN reissuance.</p>
<p>A.3.4 The Contractor should provide description of marketing and education services that they can /will provide.</p>	<p>A.3.4 Describe capabilities in this area.</p>



## Section VII – Program Development and Support Requirements

### Module 1 – PIT Controlled Disbursement and Direct Deposit Services

Note: For each required response state whether the proposed actions/solutions are currently in existence, based on modification to existing functionality or whether they will require new development. Bidders must respond to each of the Guiding Principles in this section.

Guiding Principles	Required Response
<p>A. Processing Site and Electronic Funds Origination Site</p> <p>The Contractor must establish and maintain a controlled disbursement processing clearance site. The Department’s preference is for the draft clearance site to be located within New York State. Furthermore,</p> <ul style="list-style-type: none"> <li>• The bank must be a state or federally chartered commercial bank and must have a branch in New York State.</li> <li>• The bank must agree, if the draft processing site is located outside of the state, that the face of the draft will contain only the bank’s name and will not include the draft processing location.</li> <li>• In the case of forgeries, if the drafts are processed outside of the state, the bank must be able to accept a subpoena served on a New York State branch.</li> </ul> <p>In addition, an EFT origination site is required which must be located in the continental United States. The proposed schedule and method of transmission must incorporate times and frequencies that support DTF Direct Deposit standards (as stated in Section II – Performance Standards, Liquidated Damages and Reimbursements).</p>	<p>A. Affirm understanding with and agreement to meet the Guiding Principle, and provide details including, but not limited to the:</p> <ol style="list-style-type: none"> <li>1. Proposed site for controlled disbursement processing operations.</li> <li>2. Proposed location for EFT originations.</li> <li>3. The direct deposit transmission strategy/proposal which supports processing.</li> <li>4. Floor plan of the physical location for each Controlled Disbursement processing function (e.g., draft presentment, draft storage) during peak and non-peak periods.</li> <li>5. Daily and weekly peak and non-peak processing capacity for PIT Refund drafts and direct deposits. The bidder should address this in terms of the volumes and performance standards (Section II – Performance Standards, Liquidated Damages and Reimbursements).</li> <li>6. Percentage that DTF issuances would represent when compared to the total number and dollar value of issuances processed by the Contractor for all clients; and the details regarding the</li> </ol>

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Guiding Principles	Required Response
<p>The processing site(s) must comply with applicable building codes, regulations and laws.</p>	<p>ownership of the processing site - is it to be owned or leased, and if leased, the term of the lease.</p>
<p><b>B. Internal Controls, Security and Confidentiality</b></p> <p>The Contractor must utilize generally accepted industry standards and procedures to minimize the risk of loss, destruction or theft of physical assets and to prevent unauthorized access to taxpayer or Fund Recipient information. These standards and procedures must be auditable and must address all points in the workflow including, but not limited to, the intake process, applications, transactions, storage (physical and electronic), and data transmission.</p> <p>The Contractor understands that in the performance of the banking services under this Agreement, the Contractor, its employees, directors, officers and sub-contractors may receive or have access to Confidential Information, and agrees that the Contractor, its employees, directors, officers and sub-contractors are: (i) required to take all appropriate action to protect the confidentiality of all Confidential Information supplied to it or developed by it during the course of its performance under the Agreement; (ii) required to abide by all State confidentiality policies and procedures and (iii) prohibited from copying, removing, communicating, or otherwise revealing any Confidential Information of the State.</p> <p>Note the General Controls Program Performance Standards in Section II – Performance Standards, Liquidated Damages and Reimbursements, of this RFP.</p>	<p>B. Affirm understanding with and agreement to meet the Guiding Principle, and provide details addressing the Guiding Principle, including, but not limited to:</p> <ul style="list-style-type: none"> <li>• The existing internal controls and security and confidentiality procedures.</li> <li>• Security tools (e.g., locks, alarms, badges, cameras, etc) to be used to ensure that physical security is maintained.</li> <li>• The screening process for staff hired by the Contractor, as well as any other persons having access to the processing site and drafts, within the Contractor’s site.</li> <li>• The approach used to present the secrecy and confidentiality provisions to employees for signature.</li> <li>• The prevention of unauthorized access to physical site(s) and systems (i.e., code and data); record keeping of such attempts; the methods used to address these attempts by the Contractor, and the method used to communicate them to the Department.</li> <li>• The method used to record access to systems and data, including supervisory data capture overrides, and how long these records are maintained.</li> <li>• Identification and designation of high</li> </ul>

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	<p>risk areas (e.g., data transmission areas, draft storage areas) and any unique internal control and security procedures used to mitigate this risk.</p> <ul style="list-style-type: none"> <li>• Security procedures that will be used for moving work within and among the processing site(s).</li> <li>• If subcontractors are used, delineate who the material subcontractors are and the nature of the relationship (e.g., security, courier, and systems design).</li> </ul>
<p><b>C. Training and Training Tools</b></p> <p>The Contractor must demonstrate the ability to adequately train all persons.</p>	<p>C. Affirm understanding with an agreement to meet the Guiding Principle, and provide details, including, but not limited to the training approaches during the Development, Implementation and Post-Implementation phases. Include a description of the circumstances that would require additional training and/or retraining.</p>
<p><b>D. Systems Environment</b></p> <p>The Contractor must use generally accepted industry standards to implement and operate the systems environment to ensure that the requirements and performance standards (Section II – Performance Standards, Liquidated Damages and Reimbursements) are achieved. This must include the use of auditable procedures for system operations, change control, capacity planning, performance management, problem management, backup (including off-site storage), and fail safe and disaster recovery.</p> <p>The systems environment must be scalable to accommodate future systems expansion.</p>	<p>D. Affirm understanding with, and agreement to, meet the Guiding Principle, and provide details, including, but not limited to:</p> <ol style="list-style-type: none"> <li>1. The hardware, software and associated throughput capabilities, including the percentage of total capacity to be utilized during peak periods for the program(s).</li> <li>2. The location of the system(s) for all services.</li> <li>3. An indication of whether the systems environment is to be shared. If shared, identify the process to establish and administer priorities for the systems environment, the process for resolving</li> </ol>

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<p>The systems environment must reside in the continental United States of America.</p> <p>If the systems environment is shared, the Contractor must follow auditable procedures which ensure the security and confidentiality of the Department's programs and data.</p> <p><u>Data Connectivity</u></p> <p>The Contractor must be able to engage in electronic data file exchange with the Department using an exchange protocol acceptable to the Department.</p> <p>The Department would prefer this exchange via the Internet. Data file exchange processes that are specifically <u>unacceptable</u> to the Department are: magnetic tapes, unencrypted internet email, paper, CD, floppy Disc, removable drives, analog or digital dial up, Value Added Networks (VAN) or DSL connections.</p> <p>The Department has approved using a secure file transfer protocol (SFTP) provided by Opens' and Shell as our Client and Server secure FTP connection software, respectively. The Contractor will be responsible for implementing compatible software with these products. The Department has approved the use of Public/ Private Key authentication for the SFTP protocol, and as such, requires the use of SSH2, 1024 byte, RSA algorithms in the key generation. Additionally, the Department has approved and prefers the encryption of the data file using PGP with PGP encryption key exchange. This connection will need to meet all Department and industry standard security measures, including using the standard TCP Port 22.</p>	<p>conflicts and provide any Service Level Agreements that will impact provision of services to the Department.</p> <p>4. The auditable procedures for system operations, change control, capacity planning, performance management, problem management, security and confidentiality, and fail safe and disaster recovery and the availability of these procedures for the Department's review.</p> <p>5. Provide a detailed description of the proposed method(s) for electronic file data exchange and online access for Department employees.</p>

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<p><u>Internet Connectivity</u></p> <p>The Contractor must have acceptable internet browser software to enable access to the Department’s website, if applicable. The current minimum requirement is Microsoft Internet Explorer 5.5.</p> <p>The Department strongly prefers that any access provided for Department employees to the Contractor’s system be done online via the Internet. The Contractor’s system must be compatible with MS Proxy using standard HTTP or HTTPS on TCP ports 80 or 443.</p> <p><u>Image Media</u></p> <p>The Department requires either LTO-2 tapes or file transfer. For the file transfer, the images are to be bundled into a ZIP archive, which must be encrypted, using EDE’s public PGP key and then transferred (ftp put) to the Department, over the internet.</p> <p><u>Test Environment</u></p> <p>The Contractor must maintain a test environment, separate from the processing environment, which is configured to allow enhancements in a controlled environment.</p>	
<p>E. Automated Systems Design, Development, Maintenance and Enhancement</p> <p>The Contractor must adhere to generally accepted information technology standards for development, documentation, maintenance and enhancement of the proposed applications solution. This includes the use of auditable procedures for quality and</p>	<p>E. Affirm understanding with an agreement to meet the Guiding Principle, and provide details including, but not limited to:</p> <ol style="list-style-type: none"> <li>1. An identification of where the development will take place and a description of the experience of the developer(s). If development will be</li> </ol>

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<p>version control. The proposed development tools and procedures must support rapid application development for the initial implementation and for addressing future changes. The Contractor must ensure that all software components are maintainable over the life of the contract and that the software and associated documentation is transferable to DTF, or designee, in the event that the Contractor was no longer able to carry out its responsibilities or at the end of the contract to support transition to the subsequent service provider, if that is not the incumbent.</p> <p><u>Back-up of Data and Software.</u></p> <p>The Contractor must maintain and retain both on-site and off-site processible electronic copies of all tax data and image files that are transmitted to DTF. The Contractor must back-up all data transmission/image tapes or data/image files which are sent to the Department and retain them in a secure, environmentally controlled, off-site location for no less than twelve (12) months.</p> <p>The Contractor must back-up source and object code each week, at a minimum, and retain in a secure and environmentally controlled off-site location for the duration of the contract, to assist in the restoration of files.</p> <p>The Contractor must be able to provide the Department, upon request, with an exact duplicate of any data transmission/image tapes or data/image files which had been sent to the Department within the following timeframes:</p> <ol style="list-style-type: none"> <li>1. if the original transmission or transmittal of the data/images occurred within the past</li> </ol>	<p>subcontracted, describe the Contractor's previous development experience with that subcontractor.</p> <ol style="list-style-type: none"> <li>2. A description of a recently developed, automated, high-volume transaction system, including:               <ol style="list-style-type: none"> <li>a. The development methodology which was utilized.</li> <li>b. The procedures used to ensure quality and version control.</li> <li>c. The utilization of modularized programming (i.e., reusable code).</li> <li>d. Ad hoc reporting tools which were utilized and whether these tools would be used for the system(s) developed for this RFP.</li> <li>e. The method used to control errors found during testing, and whether this method would be used for system(s) developed for this RFP.</li> </ol> </li> </ol> <p>In addition, the following must be included:</p> <ol style="list-style-type: none"> <li>a. The proposed conceptual systems design.</li> <li>b. The proposed workload estimates for the systems development.</li> <li>c. Proposed staffing plan for systems development.</li> <li>d. Proposed development project</li> </ol>

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<p>seven days, then the duplicate file must be available to the Department within 24 hours of the request; or</p> <p>2. If the original transmission or transmittal of the data/images occurred more than seven days previous, then the duplicate file must be available to DTF within five business days of the request.</p>	<p>schedule (from conceptual systems design through implementation).</p> <p>For back-up of data and software requirements, the Contractor must provide the following information:</p> <ul style="list-style-type: none"> <li>a. Proposed back-up processes for electronic and other data and images.</li> <li>b. Proposed period of retention for all backed-up data transmissions.</li> <li>c. Proposed period of retention for backed-up source and object code.</li> <li>d. Proposed retention site.</li> <li>e. Proposed security plans for the delivery process and retention site(s).</li> </ul> <p>Three related deliverables are to be provided during implementation (see Section VIII–Implementation Requirements):</p> <p><b>Deliverable 1:</b> Detailed Systems Requirement Documentation (including, but not limited to requirement documents, system design specifications, general and detailed workflows, data entry requirements, custom system requirements, image requirements, and custom reporting) – to be delivered during program development and again, prior to implementation.</p> <p><b>Deliverable 2:</b> Test Result Documentation,</p>

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	<p>prior to DTF's UAT (including, but not limited to the Contractor's UAT plan, business cases tested and UAT results prior to DTF's UAT test).</p> <p><b>Deliverable 3:</b> System Architecture Documentation (including, but not limited to system architecture diagrams) – to be delivered during program development and again, prior to implementation.</p>
<p>F. Systems Maintenance, Testing and User Acceptance Testing</p> <p>The Contractor must prepare and execute, during development, prior to certification, a comprehensive system test of all processing components (e.g., hardware, software, work-flow procedures, integration of third part data and payment information, etc) developed, modified and/or acquired for the programs of this RFP. Such testing should include the use of scaled down staffing with a mix of permanent and temporary staff – mirroring actual peak processing.</p> <p>The Contractor must, as part of its system test, or as a separate test (prior to execution of DTF user test cases), participate fully in a jointly-managed test of all file transfers required pursuant to this RFP (as specified in Section VI and VII). This test will include, at a minimum, testing all file formats for adherence to specifications, transmission procedures and encryption solutions, as applicable; and must include testing appropriate volumes of data for the following file transfers:</p> <p>From DTF:</p> <ol style="list-style-type: none"> <li>1. Draft issuance files.</li> </ol>	<p>F. Affirm understanding with an agreement to meet the Guiding Principle. and provide details, including, but not limited to:</p> <ol style="list-style-type: none"> <li>1. The automated tools used to develop the test cases and support the process, such as reviewing data output for expected volumes, etc.</li> <li>2. Throughout development, reports which account for test conditions developed, executed, defects, defects corrected, defects identified during component testing, system testing, integration testing and user acceptance testing.</li> <li>3. Staff qualifications/experience of those conducting the user testing, and their role in the design and development of the implementation deliverables, such as conceptual design, detail design, etc.</li> <li>4. Explanation of the methodology to develop the scenarios that will be tested, including the expected role of the Department.</li> <li>5. A description of the projects where this methodology/ approach has been used before.</li> </ol>



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<p>2. ACH credit files.</p> <p>To the Department:</p> <ol style="list-style-type: none"> <li>1. Paid drafts and paid checks files.</li> <li>2. ACH acknowledgment files.</li> <li>3. ACH rejection code files.</li> <li>4. ACH transit and routing number verification table.</li> <li>5. Image index output files and associated images, on LTO-2 or file transfer, as described above.</li> </ol> <p><u>Annual Cycle Testing</u></p> <p>The Contractor will be required to perform a PIT Refund annual cycle test prior to actual annual payment processing, including testing of any and all associated file transmissions.</p> <p><u>Change Control Procedure</u></p> <p>The Contractor must follow the agreed upon change control procedure for identifying, communicating to the Department and correcting any production problems with the system(s) developed and/or modified pursuant to this RFP.</p> <p><u>Production Problems</u></p> <p>The Contractor must agree to implement data fixes as necessary to correct production programs, pursuant to approval from a Department-authorized representative, including but not limited to utilization of the following methods:</p> <ol style="list-style-type: none"> <li>1. Complete file restoration.</li> </ol>	<ol style="list-style-type: none"> <li>6. Proposed timeframes for the complete testing cycle, including development of test cases/scenarios, and turnaround time to complete the tests.</li> </ol>

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<p>2. Re-running programs.</p> <p>3. Direct fixes to the database(s), as applicable.</p>	
<p>G. Organizational Structure and Staffing for Operations</p> <p>The Contractor must provide and maintain an organizational structure and level of staffing to adequately operate the program(s) as required by the requirements of this RFP and to achieve the performance standards (Section II – Performance Standards, Liquidated Damages and Reimbursements).</p>	<p>G. Affirm understanding with an agreement to meet the Guiding Principle, and provide details, including, but not limited to:</p> <ol style="list-style-type: none"> <li>1. The Contractor’s organizational structure within the overall corporate structure (if applicable) and the organizational structure as it pertains to these programs.</li> <li>2. For the development component of this engagement, provide the name of the project/engagement manager responsible for development and implementation, and the project manager’s immediate direct reporting subordinate for :               <ol style="list-style-type: none"> <li>a) Controlled disbursement services planning and analysis.</li> <li>b) Systems development.</li> <li>c) User acceptance testing.</li> <li>d) Contract negotiations.</li> </ol> </li> </ol> <p>For each of these positions provide the percentage of time to be devoted to this program and describe their managerial role in two previous business engagements of similar complexity to the services in this RFP.</p> <p>For the operations component of this</p>

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	<p>engagement, identify the key executives and managers, by title; their experience in managing controlled disbursement and direct deposit operations and the amount of time that each manager will be allocated to those programs during operations.</p> <p>3. The supervisory structures for the controlled disbursement and direct deposit operations, including the identification of the supervisor to staff ratios, key supervisors by function and their allocation of time to supervision tasks versus line tasks, and the process which will be utilized to maintain adequate levels of staff at all times.</p> <p>4. The staffing levels, by function, that would be utilized including the variations between permanent and temporary staff, during both peak and non-peak periods.</p> <p>5. The supervisor to staff ratio, by function, during peak and non-peak periods.</p> <p>6. The recruitment methods that would be utilized to maintain adequate levels of staff at all times.</p> <p>7. The methods utilized to encourage trained temporary employees to return for future peak periods.</p> <p>Note: During program development and again, prior to implementation, <b>Deliverable 4</b> – Operational Procedures Documentation must be provided. As described in Section VIII – Implementation Requirements, the Operational</p>

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	Procedures Documentation will include, among other things, a description of current staffing plans.
<p>H. Performance Monitoring, Audits and Reviews</p> <p>The Contractor must cooperate fully with the Department, or designees, in all performance reviews. Cooperation includes, but is not limited to, provision of all necessary documents in a timely manner and provision of adequate working space to conduct such reviews.</p> <p>In addition to reviews by the Department, the Contractor must cooperate fully with the Office of the State Comptroller (OSC), or its designee(s), for all aspects of audits, reviews, etc.</p>	<p>H. Affirm understanding with an agreement to meet the Guiding Principle, and provide details including, but not limited to:</p> <ol style="list-style-type: none"> <li>1. The provision of adequate working space, including, but not limited to: private office or conference room, work stations, access to phone and data lines, photocopier, file cabinet with locks, etc.</li> </ol>
<p>I. Cooperation with Department/State Investigations</p> <p>The Contractor must agree to cooperate fully with any lawful investigation conducted by the Department or its designee acting on its behalf including the Inspector General’s Office, the NY State Police or any municipal law enforcement agency within New York State.</p> <p>In the case of Department criminal investigations, an out of state commercial bank which performs depository bank services must accept a subpoena served on one of its New York State branches/offices.</p> <p>In the event that the Department determines it necessary to investigate evidence relative to a possible or actual 1) crime, or 2) breach of confidentiality or security (e.g., loss of return documents, or loss of remittances), Contractor and its subcontractors shall cooperate fully with the</p>	<p>I. Affirm understanding with an agreement to meet the Guiding Principle, providing details as to how this Guiding Principle will be met.</p>

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Guiding Principles	Required Response
<p>Department to the extent permitted by law to investigate and identify the responsible individuals. Contractor and its subcontractors shall, to the extent permitted by law, make their employees and all relevant records, including personnel records and employee photographs, available to Department investigators upon request by the Department's Office of Deputy Inspector General. The Department may interview Contractor's employees and/or agents in connection with an investigation during normal business hours.</p>	
<p>J. Adaptability to Program Changes</p> <p>The Contractor must demonstrate its ability to respond rapidly or by a fixed deadline to functionality changes due to legislative or administrative requirements (often in constrained time frames). Common examples of program changes include, but are not limited to:</p> <ol style="list-style-type: none"> <li>1. Reduced interest period to pay refunds, thus accelerating the release of refund drafts to earlier in the year.</li> <li>2. The addition of new security features on drafts.</li> </ol>	<p>J. Affirm understanding with an agreement to meet the Guiding Principle, and provide details including, but not limited to:</p> <ol style="list-style-type: none"> <li>1. A description of the capabilities and limitations with regard to the ability to respond rapidly to change requests. At a minimum, the following topics should be discussed: <ol style="list-style-type: none"> <li>a. The methodology to be used to analyze program changes and the identification of the resource commitment to implement those changes.</li> <li>b. The levels of flexibility (tolerance for change) built into the proposed processing approach.</li> <li>c. A description of the scalability of the physical site and automated environment to accommodate functionality changes and/or workload expansion.</li> </ol> </li> </ol>

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	For response item J.1.a, above, provide an estimate of the number of development and testing hours to implement these changes within the conceptual systems design provided in response to Guiding Principle D, E, & F in this section.
<p>K. Disaster Recovery/Fail Safe Operations</p> <p>The Contractor must provide a sufficient level of fail safe and disaster recovery operations to ensure that disruptions to services are transparent to taxpayers. <u>All functionality must have full redundancy.</u></p> <p>The Contractor must provide an approach to and provisions for continued processing in the event of conditions short of disaster. Including but not limited to: short term power failure, inclement weather conditions, high rate of absenteeism, etc., including but not limited to having a required back-up power source/generator for the processing site.</p> <p>As part of the initial implementation and certification, the Contractor shall develop and deliver a disaster recovery plan for the Programs.</p> <p>The Contractor must maintain and test the disaster recovery plan at least once annually, on a date jointly determined with the Department. The Contractor must inform the Department on an annual basis as to the status of disaster recovery/fail safe operations. The Contractor shall provide the Department with any updates to the disaster recovery plan, and/or any plans to implement recommendations resulting from routine testing/Contractor review of the disaster recovery plan.</p> <p>The Contractor must maintain, in a secure, off-site</p>	<p>K. Affirm understanding with an agreement to meet the Guiding Principle, and provide details including, but not limited to:</p> <ol style="list-style-type: none"> <li>1. Identify and describe the existing or proposed fail-safe and disaster recovery plan(s) and the extent to which the plan(s) will be able to accommodate the programs in this RFP. Provide the basic plan, the conditions it covers how it will address the conditions and any impacts to processing throughput. State the recovery window to a full restoration and throughput in a disaster situation. The description of the fail safe and disaster recovery plans should include, at a minimum, whether or not this is an automatic switch over to systems at a separate site, shared workload at multiple sites, hot site disaster recovery, and cold site disaster recovery. In addition, the priority that the Department’s programs would have within these plans. If existing plans will be utilized, identify any enhancements which will be made in order to accommodate these requirements.</li> <li>2. Describe whether or not the Department would have access to the</li> </ol>

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Guiding Principles	Required Response
<p>location, complete and up-to-date copies of disaster recovery/fail safe plans and processing center procedures and required forms, etc. applicable to the programs and all forms and procedures developed and used to assist in the restoration of operations at an alternate disaster recovery site.</p> <p>The Department must have the right to annually inspect the portion of the Disaster Recovery Plan that relates to services to be performed under the resulting contract.</p> <p>The Contractor shall provide DTF with any reports or findings from any regulatory agency (unless it is prohibited from making such disclosures by law or by such agency), independent auditors, etc., relating to disaster recovery capabilities as they pertain to the services under the contract.</p> <p>Note: Any costs associated with the disaster recovery and fail safe services should be built into the fully loaded transaction costs reflected in Section X – Financial Requirements.</p>	<p>fail-safe and disaster recovery plan(s) for review purposes.</p> <ol style="list-style-type: none"> <li>3. Provide a diagram which identifies the level of redundancy at the network, operating, and application level; including any interest processing delays during a fail-safe (e.g. check routing strategy between the main processing site and back-up site).</li> <li>4. Describe any service agreements with vendors providing identification and remediation of foreign substances in the workplace and the corresponding response timeframes.</li> <li>5. Identify how program documentation and supporting equipment will be stored off-site and available to ensure disaster recovery/ fail safe operations.</li> <li>6. Identify how the deposit disaster recovery timeframe meets or exceeds the Department’s desire to minimize cash flow losses in the event of a disaster.</li> <li>7. Address business continuity/ disaster recovery as it pertains to the services of this RFP for functional requirements specified for electronic services and ensure that the Contractor can meet their recovery time frames for transmissions to and from ACH and NYACH; to and from the Department and online balance reporting.</li> </ol>
L. Record and File Destruction	L. Affirm understanding with an agreement to meet the Guiding Principle, and provide details

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<b>Guiding Principles</b>	<b>Required Response</b>
<p>The Department requires that when records maintained by the Contractor on behalf of the Department in connection with these programs become obsolete (as determined by the Department) such records shall be destroyed. The Contractor shall destroy such records in accordance with directions from the Department. An officer or principal of the Contractor shall certify to the Department, in writing and under penalty of perjury, that such destruction has been completed in accordance with the Department's direction.</p>	<p>addressing the Guiding Principle.</p>



## Section VII – Program Development and Support Requirements

### Module 2 – Statewide Debit Card Services

Guiding Principles	Required Response
<p>A. Processing Site and Electronic Funds Origination Site</p> <p>The Contractor must establish and maintain a debit card processing site which must be located in the United States. The processing site must comply with applicable building codes, regulations and laws.</p>	<p>A. Affirm understanding with and agreement to meet the Guiding Principle, and provide details, including but not limited to the:</p> <ol style="list-style-type: none"> <li>1. Proposed site for debit card operations</li> <li>2. Details regarding ownership of the processing site – is it to be owned or leased, and if leased, the terms of the lease.</li> </ol>
<p>B. Internal Controls, Security and Confidentiality</p> <p>The Contractor must utilize generally accepted industry standards and procedures to minimize the risk of loss, destruction or theft of physical assets and to prevent unauthorized access to taxpayer or Fund Recipient information. These standards and procedures must be auditable and must address all points in the workflow including, but not limited to, the intake process, applications, transactions, storage (physical and electronic), and data transmission.</p> <p>The Contractor understands that in the performance of the banking services under this Agreement, the Contractor, its employees, directors, officers and sub-contractors may receive or have access to Confidential Information, and agrees that the Contractor, its employees, directors, officers and sub-contractors are: (i) required to take all appropriate action to protect the confidentiality of all Confidential Information supplied to it or developed by it during the course of its performance under the Agreement; (ii)</p>	<p>B. Affirm understanding with and agreement to meet the Guiding Principle, and provide details addressing the Guiding Principle, including, but not limited to:</p> <ul style="list-style-type: none"> <li>• The existing internal controls and security and confidentiality procedures.</li> <li>• Security tools (e.g., locks, alarms, badges, cameras, etc) to be used to ensure that physical security is maintained.</li> <li>• The screening process for staff hired by the Contractor, as well as any other persons having access to the processing site, within the Contractor’s site.</li> <li>• The approach used to present the secrecy and confidentiality provisions to employees for signature.</li> <li>• The prevention of unauthorized access to physical site(s) and systems (i.e., code and data); record keeping of such attempts; the methods used to address these attempts by the Contractor, and the method used to communicate them to the Department.</li> <li>• The method used to record access to systems and data, including supervisory</li> </ul>

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Guiding Principles	Required Response
<p>required to abide by all State confidentiality policies and procedures and (iii) prohibited from copying, removing, communicating, or otherwise revealing any Confidential Information of the State.</p> <p>Note the General Controls Program Performance Standards in Section II Module 2– Performance Standards, Liquidated Damages and Reimbursements, of this RFP.</p>	<p>data capture overrides, and how long these records are maintained.</p> <ul style="list-style-type: none"> <li>• Identification and designation of high risk areas (e.g., data transmission areas, draft storage areas) and any unique internal control and security procedures used to mitigate this risk.</li> <li>• Security procedures that will be used for moving work within and among the processing site(s).</li> </ul> <p>If subcontractors are used, delineate who the material subcontractors are and the nature of the relationship (e.g., security, courier, and systems design).</p>
<p><b>C. Training and Training Tools</b></p> <p>The Contractor must demonstrate the ability to adequately train all persons.</p>	<p>C. Affirm understanding with an agreement to meet the Guiding Principle, and provide details, including, but not limited to the training approaches.</p>
<p><b>D. Systems Environment</b></p> <p>The Contractor must use generally accepted industry standards to implement and operate the systems environment to ensure that the requirements and performance standards (Section II – Performance Standards Module II) are achieved. This must include the use of auditable procedures for system operations, change control, capacity planning, performance management, problem management, backup (including off-site storage), and fail safe and disaster recovery.</p>	<p>D. Affirm understanding with, and agreement to, meet the Guiding Principle and provide details including, but not limited to:</p> <p>Provide information on systems environments that can be offered to Authorized Users.</p>

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<p>E. Automated Systems Design, Development, Maintenance and Enhancement</p> <p>The Contractor must adhere to generally accepted information technology standards for development, documentation, maintenance and enhancement of the proposed applications solution. This includes the use of auditable procedures for quality and version control. The proposed development tools and procedures must support rapid application development for the initial implementation and for addressing future changes. The Contractor must ensure that all software components are maintainable over the life of the contract and that the software and associated documentation is transferable to Authorized User, or designee, in the event that the Contractor was no longer able to carry out its responsibilities or at the end of the contract to support transition to the subsequent service provider, if that is not the incumbent.</p>	<p>E. Affirm understanding with an agreement to meet the Guiding Principle, and provide details including, but not limited to:</p> <p>Provide information on automated systems design, development, maintenance and enhancements that can be offered to Authorized Users.</p>
<p>F. Systems Maintenance, Testing and User Acceptance Testing</p> <p>The Contractor must adhere to generally accepted information technology standards for systems maintenance, testing and user acceptance testing</p>	<p>F. Affirm understanding with an agreement to meet the Guiding Principle, and provide details including, but not limited to:</p> <p>Provide information on systems maintenance, testing and user acceptance testing that can be offered to Authorized Users.</p>
<p>G. Organizational Structure and Staffing for Operations</p> <p>The Contractor must provide and maintain an organizational structure and level of staffing to adequately operate the program(s) as required by</p>	<p>G. Affirm understanding with an agreement to meet the Guiding Principle, and provide details, including, but not limited to:</p> <p>The Contractor's organizational structure within the overall corporate structure (if applicable) and</p>

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<p>the requirements of this RFP and to achieve the performance standards (Section II – Performance Standards – Module II).</p>	<p>the organizational structure as it pertains to these programs. The Contractor shall provide information regarding staffing capacity to meet needs of Authorized Users.</p>
<p><b>H. Performance Monitoring, Audits and Reviews</b></p> <p>The Contractor must cooperate fully with the Authorized User, or designees, in all performance reviews. Cooperation includes, but is not limited to, provision of all necessary documents in a timely manner and provision of adequate working space to conduct such reviews.</p> <p>In addition to reviews by the Authorized User, the Contractor must cooperate fully with the Office of the State Comptroller (OSC), or its designee(s), for all aspects of audits, reviews, etc.</p>	<p><b>H. Affirm understanding with an agreement to meet the Guiding Principle, and provide details including, but not limited to:</b></p> <p>The provision of adequate working space, including, but not limited to: private office or conference room, work stations, access to phone and data lines, photocopier, file cabinet with locks, etc.</p>
<p><b>I. Cooperation with Department/State Investigations</b></p> <p>The Contractor must agree to cooperate fully with any lawful investigation conducted by the Authorized User or its designee acting on its behalf including the Inspector General’s Office, the NY State Police or any municipal law enforcement agency within New York State.</p> <p>In the case of Authorized User criminal investigations, an out of state commercial bank which performs depository bank services must accept a subpoena served on one of its New York State branches/ offices.</p> <p>In the event that the Authorized User determines</p>	<p><b>I. Affirm understanding with an agreement to meet the Guiding Principle, providing details as to how this Guiding Principle will be met.</b></p>

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<p>it necessary to investigate evidence relative to a possible or actual 1) crime, or 2) breach of confidentiality or security (e.g., loss of return documents, or loss of remittances), Contractor and its subcontractors shall cooperate fully with the Authorized User to the extent permitted by law to investigate and identify the responsible individuals. Contractor and its subcontractors shall, to the extent permitted by law, make their employees and all relevant records, including personnel records and employee photographs, available to Authorized User investigators upon request by the Authorized User’s Office of Deputy Inspector General. The Authorized User may interview Contractor’s employees and/or agents in connection with an investigation during normal business hours.</p>	
<p><b>J. Adaptability to Program Changes</b></p> <p>The Contractor must demonstrate its ability to respond rapidly or by a fixed deadline to functionality changes due to legislative or administrative requirements (often in constrained time frames). Common examples of program changes include, but are not limited to:</p> <ol style="list-style-type: none"> <li>1. Reduced interest period to pay refunds, thus accelerating the release of refund drafts to earlier in the year.</li> <li>2. The addition of new security features on drafts.</li> </ol>	<p><b>J. Affirm understanding with an agreement to meet the Guiding Principle, and provide details including, but not limited to:</b></p> <ol style="list-style-type: none"> <li>1. A description of the capabilities and limitations with regard to the ability to respond rapidly to change requests. At a minimum, the following topics should be discussed: <ol style="list-style-type: none"> <li>a. The methodology to be used to analyze program changes and the identification of the resource commitment to implement those changes.</li> <li>b. The levels of flexibility (tolerance for change) built into the proposed processing approach.</li> <li>c. A description of the scalability of the physical site and automated environment to accommodate functionality changes and/or</li> </ol> </li> </ol>

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Guiding Principles	Required Response
	workload expansion.
<p>K. Disaster Recovery/Fail Safe Operations</p> <p>The Contractor must provide a sufficient level of fail safe and disaster recovery operations to ensure that disruptions to services are transparent to taxpayers. <u>All functionality must have full redundancy.</u></p>	<p>K. Affirm understanding with an agreement to meet the Guiding Principle, and provide details including, but not limited to:</p> <p>Provide information on disaster recovery/fail safe operations that can be offered to Authorized Users.</p>
<p>L. Record and File Destruction</p> <p>OGS or Authorized User requires that when records maintained by the Contractor on behalf of OGS or the Authorized User in connection with these programs become obsolete (as determined by the OGS or the Authorized User) such records shall be destroyed. The Contractor shall destroy such records in accordance with directions from OGS or the Authorized User. An officer or principal of the Contractor shall certify to the OGS or the Authorized User, in writing and under penalty of perjury, that such destruction has been completed in accordance with the direction by OGS or the Authorized User.</p>	<p>L. Affirm understanding with an agreement to meet the Guiding Principle, and provide details addressing the Guiding Principle.</p>

## SECTION VIII – IMPLEMENTATION REQUIREMENTS

### Module 1 – PIT Controlled Disbursements and Direct Deposit

Requirements	Response
<b>1.0 Implementation Plan</b>	
<p><b>1.1</b></p> <p>The Contractor must develop a comprehensive implementation plan which supports the Contractor’s complete proposal for all development activities and ongoing operational activities.</p>	<p><b>1.1</b></p> <p>The Contractor must affirm understanding of and agreement with requirement 1.1. In addition, the Contractor must provide the individual requirement detail requested in 1.2 below.</p>
<p><b>1.2</b></p> <p>The Contractor must identify the key milestones, critical paths and associated timeframes required for the completion of all development activities in order to conform to the Department’s required certification and implementation dates (see Key Events Timetable). Included in the implementation schedule must be Deliverables 1, 2, 3 and 4 from Section VII.</p>	<p><b>1.2</b></p> <p>The Contractor must respond to requirement 1.2 by providing a comprehensive implementation schedule which integrates each of the required elements, identifying the key milestones, dependencies, associated time frames, responsible party, and points of DTF approval for both controlled disbursement and direct deposits. At a minimum, the key milestones must include, as applicable:</p> <p style="margin-left: 40px;">A. Integration/development of each required system, including:</p> <ul style="list-style-type: none"> <li>• Conceptual design;</li> <li>• Preliminary and final logical and physical database design; and,</li> <li>• Detailed system design review/approval points for: <ul style="list-style-type: none"> <li>○ Account reconciliation</li> <li>○ Online services</li> <li>○ Online balance reporting</li> <li>○ Image output</li> </ul> </li> </ul>

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Requirements	Response
	<p>B. Systems Testing, including:</p> <ul style="list-style-type: none"> <li>• Component testing;</li> <li>• System testing;</li> <li>• User acceptance testing;</li> <li>• Integrated performance testing; and,</li> <li>• DTF certification.</li> </ul> <p>C. System implementation</p> <p>D. End-User and computer site preparation, including:</p> <ul style="list-style-type: none"> <li>• Processing site selection (if applicable);</li> <li>• Procurement completion (if applicable);</li> <li>• Site preparation (if applicable); and,</li> <li>• Equipment installation and testing.</li> </ul> <p>E. Equipment, including:</p> <ul style="list-style-type: none"> <li>• Procurement, installation and testing of end user processing equipment; and,</li> <li>• Procurement, installation and testing of computer equipment, if applicable.</li> </ul> <p>F. Procedure(s) development, including:</p> <ul style="list-style-type: none"> <li>• Function level procedures;</li> <li>• Internal forms;</li> <li>• Security and confidentiality; and,</li> <li>• Fail-Safe and disaster recovery.</li> </ul> <p>G. Training development and execution, including:</p>



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Requirements	Response
	<ul style="list-style-type: none"> <li>• Training by function;</li> <li>• Supervisory training; and,</li> <li>• Staff training.</li> </ul> <p>H. Recruitment of supervisors and staff.</p> <p>I. Sub-Contractor procurement of services (if applicable).</p> <p>For each milestone identified, the responsible party (i.e., Contractor, sub-contractor or Department) must be indicated.</p>

## SECTION VIII – IMPLEMENTATION REQUIREMENTS

### Module 2 – Statewide Debit Card Services

Requirements	Response
<b>1.0 Implementation Plan</b>	
<p>1.1</p> <p>The Contractor must be able to develop comprehensive implementation plans which will support the Contractor’s offerings for all development activities and ongoing operational activities.</p>	<p>1.1</p> <p>The Contractor must affirm understanding of and agreement with requirement 1.1.</p>
<p>1.2</p> <p>Specifically for DTF, the Contractor must identify the key milestones, critical paths and associated timeframes required for the completion of all development activities in order to conform to the Authorized User’s required certification and implementation dates (see Key Events Timetable). Included in the implementation schedule must be Deliverables 1, 2, 3 and 4 from Section VII.</p>	<p>1.2</p> <p>Specifically for DTF, the Contractor must respond to requirement 1.2 by providing a comprehensive implementation schedule which integrates each of the required elements, identifying the key milestones, dependencies, associated time frames, responsible party, and points of the Authorized User’s approval for debit cards. At a minimum, the key milestones must include, as applicable:</p> <p style="margin-left: 40px;">J. Integration/development of each required system, including:</p> <ul style="list-style-type: none"> <li>• Conceptual design;</li> <li>• Preliminary and final logical and physical database design; and,</li> <li>• Detailed system design review/approval points for: <ul style="list-style-type: none"> <li>○ Online services</li> <li>○ Online balance reporting</li> </ul> </li> </ul> <p style="margin-left: 40px;">K. Systems Testing, including:</p>

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Requirements	Response
	<ul style="list-style-type: none"> <li>• Component testing;</li> <li>• System testing;</li> <li>• User acceptance testing;</li> <li>• Integrated performance testing; and,</li> <li>• Authorized User certification.</li> </ul> <p>L. System implementation</p> <p>M. End-User and computer site preparation, including:</p> <ul style="list-style-type: none"> <li>• Processing site selection (if applicable);</li> <li>• Procurement completion (if applicable);</li> <li>• Site preparation (if applicable); and,</li> <li>• Equipment installation and testing.</li> </ul> <p>N. Equipment, including:</p> <ul style="list-style-type: none"> <li>• Procurement, installation and testing of end user processing equipment; and,</li> <li>• Procurement, installation and testing of computer equipment.</li> </ul> <p>O. Procedure(s) development, including:</p> <ul style="list-style-type: none"> <li>• Function level procedures;</li> <li>• Internal forms;</li> <li>• Security and confidentiality; and,</li> <li>• Fail-Safe and disaster recovery.</li> </ul> <p>P. Training development and execution, including:</p>

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Requirements	Response
	<ul style="list-style-type: none"> <li>• Training by function;</li> <li>• Supervisory training; and,</li> <li>• Staff training.</li> </ul> <p>Q. Recruitment of supervisors and staff.</p> <p>R. Sub-Contractor procurement of services (if applicable).</p> <p>For each milestone identified, the responsible party (i.e., Contractor, sub-contractor or Department) must be indicated.</p>

## SECTION IX – CASH MANAGEMENT REQUIREMENTS

### Module 1 – PIT Controlled Disbursement and Direct Deposit

REQUIREMENT	RESPONSE
	Respond to Section IX by affirming understanding of, and agreement with, each requirement. In addition, provide the individual requirement detail requested below.
<b>1.0 Reporting</b>	
1.1  The Contractor must agree and sign (subsequent to award and prior to implementation) the Undertaking for Bank Deposits and Assignment of Securities agreement (see Appendix J of this RFP).	1.1  Affirm understanding and agreement with requirement 1.1.
<b>2.0 Funds Processing and Availability</b>	
2.1  The Contractor must ensure the prevention of unauthorized debits, both paper remittance and EFT, presented against a Department account, and must report any such unauthorized debits to the Department.	2.1  Describe how unauthorized debits, including paper remittance and EFT, presented against a Department account will be prevented and reported.
2.2  The bidder must provide their standard banking and/or service agreement(s). Submission of such agreement(s) is for informational purposes. The bidder must be willing to negotiate the terms of such agreement(s) prior to their inclusion in any subsequent contract for the services in this RFP.	2.2  Provide any standard banking and/or service agreement(s) with the proposal response.
2.3  The Contractor must inform NYS Office of the State Comptroller (OSC) and the Department of any changes	2.3  Affirm agreement to inform NYS OSC and the Department of any changes that affect

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REQUIREMENT	RESPONSE
<p>that affect individual check end-point and availability schedules. Any changes and/or revised availability schedules must be transmitted to NYS OSC and the Department in a timely manner.</p>	<p>individual check end-points and availability schedules. In addition, address other issues affecting availability, including, but not limited to the following issues/questions:</p> <ul style="list-style-type: none"> <li>A. If availability is determined by individual check endpoint, provide latest availability schedule that will apply to the NYS OSC and the Department (include a separate weekend schedule, if applicable). If this schedule does not pertain to checks of all dollar sizes, explain. Specify any charge for this service.</li> <li>B. Is availability assignment made continuously as the Department's checks are released for collection, or is assignment made at specific times during the day? If at specific times, state these times.</li> <li>C. List the transit deadlines for availability assignment to the Department accounts. Include both weekday and weekend deadlines.</li> <li>D. State the willingness and capacity to provide Saturday availability.</li> <li>E. State the level of willingness to negotiate funds availability.</li> <li>F. Quantify the direct send program for a normal weekday, as follows: <ul style="list-style-type: none"> <li>1. Direct sends to Correspondents.</li> <li>2. Direct sends to Federal Reserve Bank.</li> <li>3. Direct sends to Regional Check Processing Centers.</li> </ul> </li> <li>G. State how frequently updated availability schedules are published and confirm willingness to provide</li> </ul>

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REQUIREMENT	RESPONSE
	revised availability schedules to NYS OSC and the Department in a timely manner.
<b>3.0 Collateral</b>	
<p>3.1</p> <p>Sections 105 and 106 of the State Finance Law require financial institutions holding deposits of State monies to pledge collateral with OSC to the extent deemed appropriate by the OSC. As required by such law, the Bidder must agree to pledge securities as outlined in Section 105 of the State Finance Law or to obtain a surety bond by an insurance company with an AAA rating to secure the State's interest in any depository account and any "pass through" accounts to the extent deemed appropriate by OSC. OSC shall establish and periodically review and adjust, as necessary, the amounts held as collateral. Collateral must be held at the NYS fiscal agent. DTF reserves the right to periodically verify the amount of collateral held.</p>	<p>3.1</p> <p>Affirm understanding of and agreement with requirement 3.1.</p>
<b>4.0 Wire Transfers</b>	
<p>4.1</p> <p>The Contractor must agree (subsequent to award and prior to implementation) with a NYS OSC Funds Transfer Agreement (see Appendix F of this RFP). The Contractor must also agree to wire transfer funds from any accounts associated with the Program to a NYS OSC designated account.</p>	<p>For 4.1 and 4.2 affirm agreement and willingness to comply with the requirement and/or provide comments regarding the NYS OSC Funds Transfer Agreement, along with changes the commercial bank would request.</p>
<p>4.2</p> <p>The Contractor must provide a system for OSC to initiate/release wire transfers from the State's general account.</p>	<p>4.2</p> <p>Affirm understanding of and agreement to requirement 4.2.</p>
<b>5.0 Automated Clearing House (ACH) Network Rules and</b>	

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REQUIREMENT	RESPONSE
<b>Regulations</b>	
5.1  The Contractor must be a member of the National Automated Clearinghouse Association (NACHA) and agree to conform to all ACH Rules and Regulations.	5.1  Affirm understanding of and agreement to requirement 5.1.
5.2  The Contractor must be able to act as both an Originating Depository Financial Institution (ODFI) and a Receiving Depository Financial Institution (RDFI) – able to both initiate and receive ACH entries.	5.2  Affirm understanding of and agreement to requirement 5.2.
5.3  The Contractor must notify the Department and NYS OSC of rule changes that impact the processing of the Department’s transactions through the ACH network prior to the change becoming effective.	5.3  Affirm understanding of and agreement to requirement 5.3.



## SECTION IX – CASH MANAGEMENT REQUIREMENTS

### Module 2 – Statewide Debit Card

REQUIREMENT	RESPONSE
	Respond to Section IX by affirming understanding of, and agreement with, each requirement. In addition, provide the individual requirement detail requested below.
<b>1.0 Reporting</b>	
1.1  The Contractor must agree and sign (subsequent to award and prior to implementation) the Undertaking for Bank Deposits and Assignment of Securities agreement (see Appendix J of this RFP).	1.1  Affirm understanding and agreement with requirement 1.1.
<b>2.0 Funds Processing and Availability</b>	
2.1  The bidder must provide their standard banking and/or service agreement(s). Submission of such agreement(s) is for informational purposes. The bidder must be willing to negotiate the terms of such agreement(s) prior to their inclusion in any subsequent contract for the services in this RFP.	2.2  Provide any standard banking and/or service agreement(s) with the proposal response.
<b>3.0 Collateral</b>	
3.1  Sections 105 and 106 of the State Finance Law require financial institutions holding deposits of State monies to pledge collateral with OSC to the extent deemed appropriate by the OSC. As required by such law, the Bidder must agree to pledge securities as outlined in Section 105 of the State Finance Law or to obtain a	3.1  Affirm understanding of and agreement with requirement 3.1.

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REQUIREMENT	RESPONSE
surety bond by an insurance company with an AAA rating to secure the State’s interest in any depository account and any “pass through” accounts to the extent deemed appropriate by OSC. OSC shall establish and periodically review and adjust, as necessary, the amounts held as collateral. Collateral must be held at the NYS fiscal agent. DTF reserves the right to periodically verify the amount of collateral held.	
<b>4.0 Wire Transfers</b>	
4.1  The Contractor must agree (subsequent to award and prior to implementation) with a NYS OSC Funds Transfer Agreement (see Appendix F of this RFP). The Contractor must also agree to wire transfer funds from any accounts associated with the Program to a NYS OSC designated account.	For 4.1 and 4.2 affirm agreement and willingness to comply with the requirement and/or provide comments regarding the NYS OSC Funds Transfer Agreement, along with changes the commercial bank would request.
4.2  The Contractor must provide a system for OSC to initiate/release wire transfers from the State's general account.	4.2  Affirm understanding of and agreement to requirement 4.2.
<b>5.0 Automated Clearing House (ACH) Network Rules and Regulations</b>	
5.1  The Contractor must be a member of the National Automated Clearinghouse Association (NACHA) and agree to conform to all ACH Rules and Regulations.	5.1  Affirm understanding of and agreement to requirement 5.1.
5.2  The Contractor must be able to act as both an Originating Depository Financial Institution (ODFI) and a Receiving Depository Financial Institution (RDFI) – able to both initiate and receive ACH entries.	5.2  Affirm understanding of and agreement to requirement 5.2.

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REQUIREMENT	RESPONSE
5.3  The Contractor must notify the Department and NYS OSC of rule changes that impact the processing of the Department's transactions through the ACH network prior to the change becoming effective.	5.3  Affirm understanding of and agreement to requirement 5.3.

## Section X - Financial Requirements

### Module 1 – PIT Controlled Disbursement and Direct Deposit Services

Requirements	Response
<p><b>ALL COSTS ASSOCIATED WITH THE REQUIREMENTS OF MODULE 1 OF THIS RFP MUST BE INCORPORATED INTO THE BIDDER'S MODULE 1 FINANCIAL PROPOSAL RESPONSE - NO OTHER ADD ON COSTS WILL BE PERMITTED.</b></p> <p>Payments to the Contractor will be made in accordance with Article 11 of the New York State Finance Law.</p> <p>A commercial bank bidding as a prime contractor must prepare two costs proposals, one assuming payment by direct fee, and another assuming payment by compensating balances. A document processor bidding as a prime contractor must prepare a cost proposal assuming direct fee.</p> <p>The State reserves the right to reimburse the commercial bank Contractor via <u>direct payments</u> or <u>compensating balance payments</u>, or a combination of both, at the State's discretion. The method of payment selected by the State will be the one that provides the least cost to the State (which will be calculated using the volumes provided in Exhibit A - Volumes of this RFP).</p> <p><u>Note</u> that the volumes provided in Exhibit A – Volumes, of this RFP, are shown to give a sense of what the volumes have been for the programs. Such volumes, or any other, do not represent a volume guarantee. Payments by the State to the Contractor will be based on items processed the previous month.</p>	<p>Respond to Section X by affirming understanding of, and agreement with, each requirement. In addition, provide the individual requirement detail requested.</p>

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Requirements	Response
<p><b>Payment by Direct Fee</b></p> <p>If the State elects to pay by direct fee, the State may chose to either offset the fee payment with earnings credits (as hereinafter defined) or request direct reimbursement from the Contractor. Earnings credits are to be calculated using the following formula:</p> <p>Earnings Credits =</p> $(average\ available\ account\ balance) \times (1-RR) \times (ECR) \times Time$ <p>Where:</p> <p>RR = Federal Reserve Bank Reserve Requirement percentage (currently 10%)</p> <p>ECR = Earnings Credit Rate (the determination of which is described below); and</p> <p>Time = Number of days in period/365.</p> <p>The Earnings Credit Rate is the monthly average investment yield on the three-month Treasury Bill, as determined at the weekly auction and published in the <u>New York Times</u>. The Earnings Credit Rate shall be determined by NYS OSC and confirmed with the Contractor. If payment is by direct fee, the Contractor must provide a monthly account analysis, along with an invoice to DTF.</p> <p><b>Payment by Compensating Balance</b></p> <p>If the State elects to pay by compensating balance, the value of the compensating balance shall be calculated using the same formula as shown above under "Payment by</p>	

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Requirements	Response
<p>Direct Fee”, provided, however, that the Earnings Credit Rate shall be 50 basis points higher than the monthly average investment rate on the three-month Treasury Bill as determined at the weekly auction and published in the <u>New York Times</u>. The Earnings Credit Rate shall be determined by NYS OSC and confirmed with the Contractor. If payment is made via compensating balance, the Contractor must provide a monthly account analysis to DTF and OSC. Such an analysis must include the processed volume as well as total costs associated with each account.</p> <p><b>Payment for Services</b></p> <p>Payment for services shall be billed by the Contractor to DTF and will be paid in accordance with the voucher and audit procedures established by OSC.</p> <p>The Contractor shall provide DTF with any outstanding invoice or voucher by the 15<sup>th</sup> of the month after which services are rendered, in appropriate detail to permit DTF to identify all fees and charges imposed by the Contract for such invoice/voucher.</p> <p>In addition, the Contractor shall provide DTF with any invoice or voucher within thirty calendar days after the end of New York State’s fiscal year and for all required payments for change control enhancements and for operation fee payments approved by DTF in such fiscal year and in accordance with the change procedure. Contractor must include the appropriate detail to permit DTF to justify payment of such invoice or voucher.</p>	

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Requirements	Response
<b>1.0 Operations Fees</b>	
<p>1.1</p> <p>All proposed fees must be guaranteed for the first three years of the initial term (see Introduction) and adjustable thereafter on an annual basis, using the CPI-U methodology stated in this section. Any desired CPI-U change requests must be made within thirty calendar days prior to the end of the contract year. However, if the Department initiates change controls which result in efficiencies, it is expected that Contractor operations fees will be reduced through the change control procedure. (See Appendix G – Change Control Procedures)</p>	<p>1.1</p> <p>Affirm understanding of an agreement with the requirement and the CPI-U methodology stated in CPI-U attachment on this section.</p>
<p>1.2 Fully Loaded Transaction Fee – Paid Drafts</p> <p>A fully loaded operations fee must include, but not be limited to <u>all</u> costs related to services required in this RFP, including development , staffing, facilities, equipment, systems maintenance, management, program support activities, training, and any indirect costs related to the required functions for each PIT Refund draft paid.</p>	<p>1.2</p> <p>Complete Financial Tables 1 and 2 of this Section.</p>
<p>1.3 Fully Loaded Transaction Fee – Direct Deposit</p> <p>A fully loaded operations fee for direct deposits must include, but not be limited to, all costs related to services required in this RFP, including development, staffing, facilities, equipment, system maintenance, management, program support activities, training, and any indirect costs related to the required functions for each PIT Direct Deposit.</p>	<p>1.3</p> <p>Complete Financial Tables 1 and 2 of this Section.</p>

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Requirements	Response
<p>1.4 Alternative Fully Loaded Transaction Fee - Paid Drafts</p> <p>In the event that a bidder is awarded Module 1 and Module 2, bidders are invited to provide an alternate fee for paid drafts.</p>	<p>1.4</p> <p>Complete Financial Tables 3 and 4 of this Section.</p>
<p>1.5 Alternative Fully Loaded Transaction Fee – Direct Deposits</p> <p>In the event that a bidder is awarded Module 1 and Module 2, bidders are invited to provide an alternate fee for paid drafts.</p>	<p>1.5</p> <p>Complete Financial Tables 3 and 4 of this Section.</p>
<b>2.0 System Enhancement Rates</b>	
<p>2.1 System Enhancement Programming Rates</p> <p>Indicate any hourly programming rates for systems enhancement services.</p>	<p>2.1</p> <p>Complete Financial Tables 1 and 2 of this Section, as applicable.</p>
<p>2.2 System Enhancement Testing Rates</p> <p>Identify the hourly user acceptance testing (UAT) rates for systems enhancement services. The rates provided shall be applicable to both testing performed in connection with the development of an agreed upon enhancement, as well as resources necessary to support the Department’s testing of any such agreed upon enhancement.</p>	<p>2.2</p> <p>Complete Financial Tables 1 and 2 of this Section, as applicable.</p>
<b>3.0 Other Fees</b>	
<p>3.1 FDIC Fees</p> <p>FDIC fees must be stated separately, and should not be included within the operational fees. FDIC fees must be a pass-through cost only and no additional fees may be added. The State may elect to pay for FDIC fees as an add on to this contract or include the fees in any</p>	<p>3.1</p> <p>Provide the proposed FDIC fees within Financial Tables 1 and 2 of this Section.</p>



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Requirements	Response
overall existing relationship with the Contractor and pay for them by compensating balance.	

## Section X – Financial Requirements

### Module 2 – Debit Cards

Requirements	Response
<p><b>ALL COSTS ASSOCIATED WITH THE REQUIREMENTS OF MODULE 2 OF THIS RFP MUST BE INCORPORATED INTO THE BIDDER'S MODULE 2 FINANCIAL PROPOSAL RESPONSE - NO OTHER ADD ON COSTS WILL BE PERMITTED.</b></p> <p>Payments to the Contractor will be made in accordance with Article 11 of the New York State Finance Law.</p> <p>A commercial bank bidding as a prime contractor must prepare two costs proposals, one assuming payment by direct fee, and another assuming payment by compensating balances. A document processor bidding as a prime contractor must prepare a cost proposal assuming direct fee.</p> <p><u>Note</u> that the volumes provided in this RFP, are shown to give a sense of what the volumes have been for similar programs and potential volume for Authorized Users. Such volumes, or any other, do not represent a volume guarantee.</p>	<p>Respond to Section X by affirming understanding of, and agreement with, each requirement. In addition, provide the individual requirement detail requested.</p>
<p><b>1.0 Operations Fees</b></p>	
<p>1.1</p> <p>All proposed fees must be guaranteed for the first three years of the initial term (see Introduction) and adjustable thereafter on an annual basis, using the CPI-U methodology</p>	<p>1.1</p> <p>Affirm understanding of an agreement with the requirement and the CPI-U methodology stated in CPI-U attachment on this section.</p>

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Requirements	Response
<p>stated in this section. Any desired CPI-U change requests must be made within thirty calendar days prior to the end of the contract year. However, if the Authorized User initiates change controls which result in efficiencies, it is expected that Contractor operations fees will be reduced through change control procedure. (See Appendix G – Change Control Procedures)</p>	
<p>1.2 Fees Associated with Debit Card Services (Authorized User and Fund Recipient)</p> <p>Detail all fees associated with the proposed debit card services.</p>	<p>1.2</p> <p>Complete Financial Table 5 for Direct Fees and Table 6 for Compensating Balances.</p>
<p>1.3 Alternate Fees Associated with Debit Card Services (Authorized User and Fund Recipient).</p> <p>In the event that a bidder is awarded Module 1 and Module 2, bidders are invited to provide an alternate fee for</p> <p>Detail all fees associated with the proposed debit card services.</p>	<p>1.3</p> <p>Complete Financial Table 7 for Direct Fees and Table 8 for Compensating Balances.</p>

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**Module 1 – PIT Controlled Disbursement and Direct Deposit**  
**Financial Table 1 – Direct Fees**

	Program Years					
	Years 1-3	Year 4	Year 5	Year 6	Year 7	Year 8
<b>Operations Fees (Requirement 1.0):</b>						
Fully Loaded Transaction Fee – PIT Refund Paid Drafts (1.2) :		CPI-U	CPI-U	CPI-U	CPI-U	CPI-U
< 1,000,000		CPI-U	CPI-U	CPI-U	CPI-U	CPI-U
1,000,001 - 2,000,000		CPI-U	CPI-U	CPI-U	CPI-U	CPI-U
2,000,001 - 3,000,000		CPI-U	CPI-U	CPI-U	CPI-U	CPI-U
Fully Loaded Transaction Fee – PIT Refund Direct Deposit (1.3)		CPI-U	CPI-U	CPI-U	CPI-U	CPI-U
<b>System Enhancement Rates (Requirement 2.0):</b>						
System Enhancements – Programming Hourly Rate (2.1)		CPI-U	CPI-U	CPI-U	CPI-U	CPI-U
System Enhancement – UAT Hourly Rate (2.2)		CPI-U	CPI-U	CPI-U	CPI-U	CPI-U
<b>Other Fees (Requirement 3.0):</b>						
FDIC Fees (3.1)						

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**Module 1 – PIT Controlled Disbursement and Direct Deposit  
Financial Table 2 – Compensating Balances**

	Program Years					
	Years 1-3	Year 4	Year 5	Year 6	Year 7	Year 8
<b>Operations Fees (Requirement 1.0):</b>						
Fully Loaded Transaction Fee – PIT Refund Paid Drafts (1.2) :		CPI-U	CPI-U	CPI-U	CPI-U	CPI-U
< 1,000,000		CPI-U	CPI-U	CPI-U	CPI-U	CPI-U
1,000,001 - 2,000,000		CPI-U	CPI-U	CPI-U	CPI-U	CPI-U
2,000,001 - 3,000,000		CPI-U	CPI-U	CPI-U	CPI-U	CPI-U
Fully Loaded Transaction Fee – PIT Refund Direct Deposit (1.3)		CPI-U	CPI-U	CPI-U	CPI-U	CPI-U
<b>System Enhancement Rates (Requirement 2.0):</b>						
System Enhancements – Programming Hourly Rate (2.1)		CPI-U	CPI-U	CPI-U	CPI-U	CPI-U
System Enhancement – UAT Hourly Rate (2.2)		CPI-U	CPI-U	CPI-U	CPI-U	CPI-U
<b>Other Fees (Requirement 3.0):</b>						
FDIC Fees (3.1)						

Note: All proposed fees must be guaranteed for the first three years of the initial term.

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**Module 1 – PIT Controlled Disbursement and Direct Deposit**

**FINANCIAL TABLE 3 - Alternate Proposal DIRECT FEE**

If Bidder is awarded both Module 1 and Module 2, it is anticipated that bidder will be able to provide alternate lower pricing for both Module 1 and Module 2 to reflect additional discounting due to the expansion of the scope for the Contractor to both Module 1 and Module 2. The evaluation and award will be completed based upon the individual scores for Module 1 and Module 2. **This Table and its proposed fees will only be used by the Department of Taxation and Finance in the event that a single bidder is awarded both Modules 1 and 2. Use of this form by bidders is optional.**

	Program Years					
	Years 1-3	Year 4	Year 5	Year 6	Year 7	Year 8
<b>Operations Fees (Requirement 1.0):</b>						
Fully Loaded Transaction Fee – PIT Refund Paid Drafts (1.4) :		CPI-U	CPI-U	CPI-U	CPI-U	CPI-U
< 1,000,000		CPI-U	CPI-U	CPI-U	CPI-U	CPI-U
1,000,001 - 2,000,000		CPI-U	CPI-U	CPI-U	CPI-U	CPI-U
2,000,001 - 3,000,000		CPI-U	CPI-U	CPI-U	CPI-U	CPI-U
Fully Loaded Transaction Fee – PIT Refund Direct Deposit (1.5)		CPI-U	CPI-U	CPI-U	CPI-U	CPI-U

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**Module 1 – PIT Controlled Disbursement and Direct Deposit**

**FINANCIAL TABLE 4 - Alternate Proposal COMPENSATING BALANCES**

If Bidder is awarded both Module 1 and Module 2, it is anticipated that bidder will be able to provide alternate lower pricing for both Module 1 and Module 2 to reflect additional discounting due to the expansion of the scope for the Contractor to both Module 1 and Module 2. The evaluation and award will be completed based upon the individual scores for Module 1 and Module 2. **This Table and its proposed fees will only be used by the Department of Taxation and Finance in the event that a single bidder is awarded both Modules 1 and 2. Use of this form by bidders is optional.**

	Program Years					
	Years 1-3	Year 4	Year 5	Year 6	Year 7	Year 8
<b>Operations Fees (Requirement 1.0):</b>						
Fully Loaded Transaction Fee – PIT Refund Paid Drafts (1.4) :		CPI-U	CPI-U	CPI-U	CPI-U	CPI-U
< 1,000,000		CPI-U	CPI-U	CPI-U	CPI-U	CPI-U
1,000,001 - 2,000,000		CPI-U	CPI-U	CPI-U	CPI-U	CPI-U
2,000,001 - 3,000,000		CPI-U	CPI-U	CPI-U	CPI-U	CPI-U
Fully Loaded Transaction Fee – PIT Refund Direct Deposit (1.5)		CPI-U	CPI-U	CPI-U	CPI-U	CPI-U

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**Module 2 – Debit Cards**  
**Financial Table 5 – Direct Fee**

**Bidders are encouraged to propose no fees/costs to Authorized Users and Fund Recipients. Bidders’ financial scores will be reduced where fees/costs are imposed.**

**Fund Recipient Fees**

	SINGLE LOAD DEBIT CARD		RELOADABLE DEBIT CARD		STORED VALUE DEBIT CARD	
Charges and or Fees for Fund Recipients	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)
Fees for purchases (on-line transaction)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Fees for purchases (off-line transaction)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)



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	SINGLE LOAD DEBIT CARD		RELOADABLE DEBIT CARD		STORED VALUE DEBIT CARD	
Charges and or Fees for Fund Recipients	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)
Surcharge from ATM owner or withdrawal fees for withdrawal at in network bank ATM		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Surcharge from ATM owner or withdrawal fees for withdrawals at non- Contractor's ATM		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Point of Sale (POS)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)

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	SINGLE LOAD DEBIT CARD		RELOADABLE DEBIT CARD		STORED VALUE DEBIT CARD	
Charges and or Fees for Fund Recipients	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)
Cash back with purchase POS		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
ATM Balance Inquiry		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
ATM denial		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)

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	SINGLE LOAD DEBIT CARD		RELOADABLE DEBIT CARD		STORED VALUE DEBIT CARD	
Charges and or Fees for Fund Recipients	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)
Bank teller cash withdrawal		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Overdraft fee		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Fees to maintain the debit card account as active and / or set minimum balances to keep the account active		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)

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	SINGLE LOAD DEBIT CARD		RELOADABLE DEBIT CARD		STORED VALUE DEBIT CARD	
Charges and or Fees for Fund Recipients	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)
Fees for replacement of lost or stolen card		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Fee for expedited delivery of card		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Fees for reissuance of expiring debit cards		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)

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	<b>SINGLE LOAD DEBIT CARD</b>		<b>RELOADABLE DEBIT CARD</b>		<b>STORED VALUE DEBIT CARD</b>	
<b>Charges and or Fees for Fund Recipients</b>	<b>Charges / Fees</b>	<b>Charge Type (Select)</b>	<b>Charges / Fees</b>	<b>Charge Type (Select)</b>	<b>Charges / Fees</b>	<b>Charge Type (Select)</b>
Fees for international ATM cash withdrawal		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Monthly account access via telephone		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Monthly account access via web		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)

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**Bidders are encouraged to propose no fees/costs to Authorized Users and Fund Recipients. Bidders' financial scores will be reduced where fees/costs are imposed.**

**Authorized User Fees**

Charges and or Fees for Authorized Users	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)
Load fees in funding debit card(s)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Maintenance fees		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Reversal fee if funds are reversed back to Authorized User		None One time Annual Recurring		None One time Annual Recurring		None One time Annual Recurring

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Charges and or Fees for Authorized Users	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)
		(specify)		(specify)		(specify)
Fees to issue and mail debit cards		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Balance replenishment fees		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Charges and / or fees for training and / or materials (provide description)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
System Enhancement						

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Charges and or Fees for Authorized Users	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)
Fees:  Programmer Hourly Rate:   UAT Hourly Rate:						
Equipment Fees  Equipment listing and Cost  Attach an additional sheet for listing of equipment and cost if necessary.						



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**Module 2 – Debit Cards**  
**Financial Table 6 – Compensating Balances**

**Bidders are encouraged to propose no fees/costs to Authorized Users and Fund Recipients. Bidders’ financial scores will be reduced where fees/costs are imposed.**

**Fund Recipient Fees**

	SINGLE LOAD DEBIT CARD		RELOADABLE DEBIT CARD		STORED VALUE DEBIT CARD	
Charges and or Fees for Fund Recipients	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)
Fees for purchases (on-line transaction)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Fees for purchases (off-line transaction)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)

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	SINGLE LOAD DEBIT CARD		RELOADABLE DEBIT CARD		STORED VALUE DEBIT CARD	
Charges and or Fees for Fund Recipients	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)
Surcharge from ATM owner or withdrawal fees for withdrawal at in network bank ATM		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Surcharge from ATM owner or withdrawal fees for withdrawals at non- Contractor's ATM		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Point of Sale (POS)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)

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	SINGLE LOAD DEBIT CARD		RELOADABLE DEBIT CARD		STORED VALUE DEBIT CARD	
Charges and or Fees for Fund Recipients	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)
Cash back with purchase POS		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
ATM Balance Inquiry		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
ATM denial		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)

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	<b>SINGLE LOAD DEBIT CARD</b>		<b>RELOADABLE DEBIT CARD</b>		<b>STORED VALUE DEBIT CARD</b>	
<b>Charges and or Fees for Fund Recipients</b>	<b>Charges / Fees</b>	<b>Charge Type (Select)</b>	<b>Charges / Fees</b>	<b>Charge Type (Select)</b>	<b>Charges / Fees</b>	<b>Charge Type (Select)</b>
Bank teller cash withdrawal		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Overdraft fee		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Fees to maintain the debit card account as active and / or set minimum balances to keep the account active		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)

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	SINGLE LOAD DEBIT CARD		RELOADABLE DEBIT CARD		STORED VALUE DEBIT CARD	
Charges and or Fees for Fund Recipients	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)
Fees for replacement of lost or stolen card		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Fee for expedited delivery of card		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Fees for reissuance of expiring debit cards		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)

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	<b>SINGLE LOAD DEBIT CARD</b>		<b>RELOADABLE DEBIT CARD</b>		<b>STORED VALUE DEBIT CARD</b>	
<b>Charges and or Fees for Fund Recipients</b>	<b>Charges / Fees</b>	<b>Charge Type (Select)</b>	<b>Charges / Fees</b>	<b>Charge Type (Select)</b>	<b>Charges / Fees</b>	<b>Charge Type (Select)</b>
Fees for international ATM cash withdrawal		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Monthly account access via telephone		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Monthly account access via web		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)

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**Bidders are encouraged to propose no fees/costs to Authorized Users and Fund Recipients. Bidders' financial scores will be reduced where fees/costs are imposed.**

**Authorized User Fees**

Charges and or Fees for Authorized Users	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)
Load fees in funding debit card(s)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Maintenance fees		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Reversal fee if funds are reversed back to Authorized User		None One time Annual Recurring		None One time Annual Recurring		None One time Annual Recurring

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Charges and or Fees for Authorized Users	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)
		(specify)		(specify)		(specify)
Fees to issue and mail debit cards		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Balance replenishment fees		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Charges and / or fees for training and / or materials (provide description)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
System Enhancement						



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Charges and or Fees for Authorized Users	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)
Fees:  Programmer Hourly Rate:   UAT Hourly Rate:						
Equipment Fees  Equipment listing and Cost  Attach an additional sheet for listing of equipment and cost if necessary.						

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**Module 2 – Debit Cards**  
**Financial Table 7 – Alternate Proposal – Direct Fee**

**Bidders are encouraged to propose no fees/costs to Authorized Users and Fund Recipients. Bidders' financial scores will be reduced where fees/costs are imposed.**

**Fund Recipient Fees**

	SINGLE LOAD DEBIT CARD		RELOADABLE DEBIT CARD		STORED VALUE DEBIT CARD	
Charges and or Fees for Fund Recipients	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)
Fees for purchases (on-line transaction)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Fees for purchases (off-line transaction)		None One time Annual Recurring		None One time Annual Recurring		None One time Annual Recurring

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	SINGLE LOAD DEBIT CARD		RELOADABLE DEBIT CARD		STORED VALUE DEBIT CARD	
Charges and or Fees for Fund Recipients	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)
		(specify)		(specify)		(specify)
Surcharge from ATM owner or withdrawal fees for withdrawal at in network bank ATM		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Surcharge from ATM owner or withdrawal fees for withdrawals at non- Contractor's ATM		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Point of Sale (POS)		None One time Annual Recurring		None One time Annual Recurring		None One time Annual Recurring

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	SINGLE LOAD DEBIT CARD		RELOADABLE DEBIT CARD		STORED VALUE DEBIT CARD	
Charges and or Fees for Fund Recipients	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)
		(specify)		(specify)		(specify)

	SINGLE LOAD DEBIT CARD		RELOADABLE DEBIT CARD		STORED VALUE DEBIT CARD	
Charges and or Fees for Fund Recipients	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)
Cash back with purchase POS		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
ATM Balance Inquiry		None One time Annual Recurring		None One time Annual Recurring		None One time Annual Recurring

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	SINGLE LOAD DEBIT CARD		RELOADABLE DEBIT CARD		STORED VALUE DEBIT CARD	
Charges and or Fees for Fund Recipients	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)
		(specify)		(specify)		(specify)
ATM denial		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Bank teller cash withdrawal		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Overdraft fee		None One time Annual Recurring		None One time Annual Recurring		None One time Annual Recurring

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	SINGLE LOAD DEBIT CARD		RELOADABLE DEBIT CARD		STORED VALUE DEBIT CARD	
Charges and or Fees for Fund Recipients	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)
		(specify)		(specify)		(specify)
Fees to maintain the debit card account as active and / or set minimum balances to keep the account active		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Fees for replacement of lost or stolen card		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Fee for expedited delivery of card		None One time Annual Recurring		None One time Annual Recurring		None One time Annual Recurring

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	SINGLE LOAD DEBIT CARD		RELOADABLE DEBIT CARD		STORED VALUE DEBIT CARD	
Charges and or Fees for Fund Recipients	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)
		(specify)		(specify)		(specify)
Fees for reissuance of expiring debit cards		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Fees for international ATM cash withdrawal		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Monthly account access via telephone		None One time Annual Recurring		None One time Annual Recurring		None One time Annual Recurring

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	SINGLE LOAD DEBIT CARD		RELOADABLE DEBIT CARD		STORED VALUE DEBIT CARD	
Charges and or Fees for Fund Recipients	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)
		(specify)		(specify)		(specify)
Monthly account access via web		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)

**Bidders are encouraged to propose no fees/costs to Authorized Users and Fund Recipients. Bidders' financial scores will be reduced where fees/costs are imposed.**

**Authorized User Fees**

Charges and or Fees for Authorized Users	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)
Load fees in funding debit card(s)		None One time Annual		None One time Annual		None One time Annual



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Charges and or Fees for Authorized Users	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)
		Recurring (specify)		Recurring (specify)		Recurring (specify)
Maintenance fees		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Reversal fee if funds are reversed back to Authorized User		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Fees to issue and mail debit cards		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)

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Charges and or Fees for Authorized Users	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)
Balance replenishment fees		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Charges and / or fees for training and / or materials (provide description)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
System Enhancement Fees:  Programmer Hourly Rate:  UAT Hourly Rate:						
Equipment Fees						

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Charges and or Fees for Authorized Users	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)
Equipment listing and Cost  Attach an additional sheet for listing of equipment and cost if necessary.						

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**Module 2 – Debit Cards**  
**Financial Table 8 – Alternate Fee – Compensating Balance**

**Bidders are encouraged to propose no fees/costs to Authorized Users and Fund Recipients. Bidders’ financial scores will be reduced where fees/costs are imposed.**

**Fund Recipient Fees**

	SINGLE LOAD DEBIT CARD		RELOADABLE DEBIT CARD		STORED VALUE DEBIT CARD	
Charges and or Fees for Fund Recipients	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)
Fees for purchases (on-line transaction)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Fees for purchases (off-line transaction)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)

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	SINGLE LOAD DEBIT CARD		RELOADABLE DEBIT CARD		STORED VALUE DEBIT CARD	
Charges and or Fees for Fund Recipients	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)
Surcharge from ATM owner or withdrawal fees for withdrawal at in network bank ATM		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Surcharge from ATM owner or withdrawal fees for withdrawals at non- Contractor's ATM		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Point of Sale (POS)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)

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	SINGLE LOAD DEBIT CARD		RELOADABLE DEBIT CARD		STORED VALUE DEBIT CARD	
Charges and or Fees for Fund Recipients	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)
Cash back with purchase POS		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
ATM Balance Inquiry		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
ATM denial		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)

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	SINGLE LOAD DEBIT CARD		RELOADABLE DEBIT CARD		STORED VALUE DEBIT CARD	
Charges and or Fees for Fund Recipients	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)
Bank teller cash withdrawal		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Overdraft fee		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Fees to maintain the debit card account as active and / or set minimum balances to keep the account active		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)

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	SINGLE LOAD DEBIT CARD		RELOADABLE DEBIT CARD		STORED VALUE DEBIT CARD	
Charges and or Fees for Fund Recipients	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)
Fees for replacement of lost or stolen card		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Fee for expedited delivery of card		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Fees for reissuance of expiring debit cards		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)



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	<b>SINGLE LOAD DEBIT CARD</b>		<b>RELOADABLE DEBIT CARD</b>		<b>STORED VALUE DEBIT CARD</b>	
<b>Charges and or Fees for Fund Recipients</b>	<b>Charges / Fees</b>	<b>Charge Type (Select)</b>	<b>Charges / Fees</b>	<b>Charge Type (Select)</b>	<b>Charges / Fees</b>	<b>Charge Type (Select)</b>
Fees for international ATM cash withdrawal		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Monthly account access via telephone		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Monthly account access via web		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)

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**Bidders are encouraged to propose no fees/costs to Authorized Users and Fund Recipients. Bidders' financial scores will be reduced where fees/costs are imposed.**

**Authorized User Fees**

Charges and or Fees for Authorized Users	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)
Load fees in funding debit card(s)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Maintenance fees		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Reversal fee if funds are reversed back to Authorized User		None One time Annual Recurring		None One time Annual Recurring		None One time Annual Recurring

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Charges and or Fees for Authorized Users	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)
		(specify)		(specify)		(specify)
Fees to issue and mail debit cards		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Balance replenishment fees		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
Charges and / or fees for training and / or materials (provide description)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)		None One time Annual Recurring (specify)
System Enhancement						

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Charges and or Fees for Authorized Users	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)	Charges / Fees	Charge Type (Select)
Fees:  Programmer Hourly Rate:   UAT Hourly Rate:						
Equipment Fees  Equipment listing and Cost  Attach an additional sheet for listing of equipment and cost if necessary.						

**CONSUMER PRICE INDEX – URBAN (CPI-U) COMPUTATION  
METHODOLOGY**

Consumer Price Index for All Urban Consumers (CPI-U) adjustments shall not exceed the annual change for the prior one-year contract year. No CPI-U increase may be added until after three years of operations under the contract have concluded. The CPI-U adjustment shall use, in deriving the CPI-U adjustment, the average annual change for the twelve (12) month period ending three (3) months prior to the period the change is to take effect.

The authoritative document in computing the CPI-U shall be the U.S. Department of Labor, Bureau of Labor Statistics, summary data from the *Consumer Price Index, Table 10, Consumer Price Index for All Urban Consumers (CPI-U): Selected areas*. All items indexed (1982-1984 = 100) unless otherwise noted within the Summary Data.

The index used shall be the selected local area if the service provided is among those listed (e.g., N.Y. - Northern N.J.-Long Island). If the local area is not among those listed, then the appropriate regional location should be utilized (e.g., Northeast Urban region).

For example, if the contract term was for four years and began on December 1, 2005, and the operations fees are fixed for the initial three years of operations (year 1 will be December 1, 2005 to November 30, 2006; year 2 will be December 1, 2006 to November 30, 2007; and year 3 will be December 1, 2007 to November 30, 2008) a CPI-U adjustment may be requested starting in December 1, 2008.

At such time, the twelve month adjustment period will be determined to be September 2007 through August 2008.

Example:

Selected Local Area	=	Northeast Urban region
Third contract year	=	December 1, 2007 to November 30, 2008
Computation Methodology	=	<u>(August 2008) – (September 2007)</u>
		(September 2007)
		<u>(233.788 – 221.559)</u>
		(221.559)
CPI-U	=	5.52%

Date	Index
August 2007	221.559
<b>September 2007</b>	<b>221.436</b>
October 2007	221.951

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November 2007	223.356
December 2007	223.425
January 2008	224.325
February 2008	225.213
March 2008	226.926
April 2008	228.133
May 2008	230.089
June 2008	232.649
July 2008	234.545
<b>August 2008</b>	<b>233.788</b>
September 2008	232.842

## SECTION XI – CONTRACT CONDITIONS

**Part A: Contract Conditions** outlines conditions directly related to the submission of bids in response to this RFP. The term “Department” or “DTF” shall also reference “OGS” for purposes of this section XI.

**Part B: Invariable Contract Conditions** outlines invariable conditions related to the submission of bids as well as any resultant Contract. **Invariable Contract Conditions** will be included in any Contract awarded as a result of this RFP without change. The Bidder must agree to the invariable conditions without change. Bidders are not permitted to propose extraneous terms with respect to these provisions. If extraneous terms are proposed, the bid will be disqualified as non-responsive.

**Part C: Negotiable Topics** are negotiable contract conditions to be addressed in the Contract awarded as a result of this RFP. Bidders are allowed to propose extraneous terms for each of these provisions.

### A. CONTRACT CONDITIONS

REQUIREMENT	RESPONSE
A. 1.1 The Bidder must accept each standard contract clause as stated in Appendix A of this RFP. Appendix A contains important information related to the contract and will be incorporated, without change or amendment, in the contract entered into between DTF and the successful bidder. By submitting a proposal to this RFP, the Bidder agrees to comply with all the provisions of Appendix A.	For A. 1.1 affirm understanding and agreement with the provisions of Appendix A.
A. 1.2 The Bidder must be willing to, and capable of, entering into a contract with DTF with respect to this RFP award, subject to the terms and conditions specified in Section II –Performance Standards, Liquidated Damages and reimbursements, and in Section XI –Contract Conditions.	<p>A. 1.2 Provide the following:</p> <ul style="list-style-type: none"> <li>A. A statement of the capability and willingness to enter into a contract in accordance with the terms and conditions specified in Section II – Performance Standards, Liquidated Damages and reimbursements, and Section XI –Contract Conditions; and,</li> <li>B. Respond in the affirmative to each clause in the referenced “Performance Standards”, and to Section XI - Contract Conditions, B. Invariable Contract Conditions and C. Negotiable Topics, or by proposing specific alternative language, where permitted.</li> </ul> <p style="text-align: right;">Note 1: Appendix A – Standard</p>

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REQUIREMENT	RESPONSE
	<p>Contract Clauses and part B – Invariable Contract Conditions of Section XI – Contract Conditions are non-negotiable).</p> <p>Note 2: DTF reserves the right to propose additional contract conditions or modifications to the Negotiable topics contained in this Section, based on its review of the Bidder’s proposal.</p>
<p>A. 1.3 The Bidder must be willing to, and be capable of; entering into a contract within thirty calendar days after award is granted. Note: If the Bidder fails to agree to this requirement, or if the bidder fails to enter into a contract within 30 calendar days after award is granted, DTF reserves the right to begin negotiations with the second –highest rated bidder for the Program.</p>	
<p>A. 1.4 The Contractor must ensure that any contract with its material subcontractors (e.g. consulting, systems development, etc., who are involved with providing services which support the services required in this RFP) conforms to the provisions of the contract between DTF and the Contractor.</p>	

**PART B - INVARIABLE CONTRACT CONDITIONS**

**The following conditions will not be subject to negotiation.**

1. “Appendix A,” “Standard Clauses for New York State Contracts,” will be incorporated as part of the contract without change or amendment and will be given precedence over all other documents. By submitting a response to the RFP, the bidder agrees to comply with all provisions of **Appendix A**.
2. Outstanding Tax Liabilities



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All outstanding tax liabilities, if any, due to the State of New York from the Contractor, or from Contractor's partners, officers, agents or subcontractors engaged in providing services under this Agreement, must be satisfied prior to Agreement execution or a payment schedule arranged for their speedy satisfaction.

3. Minority and Women-Owned Business

Module 1

a. Participation Levels

The Contractor agrees to make good faith efforts to promote and assist the participation of certified minority-business enterprises (MBE) as subcontractors and suppliers on this agreement for the provision of services and materials in the amount of two percent of the total dollar value of this agreement, and women-owned business enterprises (WBE) as subcontractors and suppliers on this agreement for provision of services and materials in the amount of two percent of the total dollar value of this agreement.

Any percentages established in a State Contract are subject to the requirements of Article 15-A of the Executive Law and the regulations published pursuant to thereto (which from time to time may be amended); and

The parties agree as a condition of the State Contract to be bound by the provisions of Section 316 of Article 15-A of the Executive Law.

See attached **Appendix C**, for a description of the requirements of Article 15-A.

Please address your ability to obtain participation levels in response to this RFP. A directory of minority and women-owned business enterprises is available from the NYS Department of Economic Development's Minority and Women's Business Development Division website at <http://www.nylovesmwbe.ny.gov/>

b. Guidelines for Utilization

M/WBE participation in various types of subcontracts, supply, leasing and other activities may be considered by the Contractor.

c. Reports

The Contractor is required to complete and submit a M/WBE Schedule of Utilization listing participation of any certified M/WBEs on this contract if goals other than zero percent are established.

Any modification in M/WBE utilization should be forwarded on a revised M/WBE Schedule of Utilization. For purposes of this section, modification

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means those changes which reduce or increase the dollar amount to be actually performed by a M/WBE, a change in the type of work to be performed, or the addition of other M/WBEs.

Module 2

**CONTRACTOR'S REQUIREMENT UNDER ARTICLE 15-A**

In July of 1988, Article 15-A of the Executive Law was passed by the New York State Legislature. This legislation provides specific rules, regulations and procedures for minority and women-owned enterprise participation in certain State Contracts.

The Office of General Services (OGS) is required to implement the provisions of Article 15-A for all of its Contracts (1) in excess of \$25,000 for labor, services, supplies, equipment, materials, or any combination of the foregoing and (2) for Contracts in excess of \$100,000 for real property renovation and construction. For purposes of this Contract, OGS hereby establishes a **0%** goal<sup>3</sup> of for minority business enterprises (MBE) participation and **0%** for women-owned business enterprises (WBE) participation.

In order to be awarded an OGS Contract, every bidder must comply with the requirements, rules and regulations outlined in Article 15-A.

**POLICY AND PROVISIONS**

It is the policy of the State of New York to promote equality of economic opportunity for minority and women-owned business enterprises (M/WBEs) in State Contracting. In order to comply with the State's objectives, the Contractors shall use "good faith efforts" to provide meaningful participation by M/WBE Subcontractors or suppliers in the performance of this Contract.

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<sup>3</sup> Although the "Goals" are set at 0%, the State feels that there may be opportunities for the successful bidder to utilize NYS certified Minority or Women Owned Enterprises to obtain commodities and/or services that the successful bidder can identify as being related to this contract. It is therefore incumbent upon the successful bidder to make a "Good Faith" effort to identify and utilize such firms.

A Good Faith effort at a minimum entails the following:

- Review the NYS Department of Economic Development list of certified M/WBEs to;
  1. Determine if any of the bidder's current suppliers of commodities and/or services is certified.
  2. Determine if there are any M/WBEs listed that supply commodities and/or services which can be applicable to this contract.
- If a M/WBE is found based on criterion 1 above, the reports (BDC-58 & BDC-25) are to be completed and submitted for any utilization of the M/WBE related to this contract.
- If a M/WBE is found based on criterion 2 above, bidder is to consider utilizing the certified M/WBE for purposes of this contract and if the M/WBE is utilized, complete and submit reports BDC-58 & BDC-25 as appropriate.

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For the purpose of determining a Contractor's good faith effort to comply with the requirements of Article 15-A or to be entitled to a waiver therefrom, the Contracting agency shall consider:

- (a) Whether the Contractor has advertised in general circulation media, trade association publications, minority-focus and women-focus media. In such event,
    - (i) whether or not certified minority or women-owned businesses which have been solicited by the Contractor exhibited interest in submitting proposals for a particular project by attending a pre-bid conference; and
    - (ii) whether certified businesses which have been solicited by the Contractor have responded in a timely fashion to the Contractor's solicitations for timely competitive bid quotations prior to the Contracting agency's bid date; and
  - (b) Whether there has been written notification to appropriate certified businesses that appear in the Directory of Certified M/WBE prepared pursuant to paragraph (f) of subdivision three of section three hundred eleven of this article; and
  - (c) Whether the Contractor can reasonably structure the amount of work to be performed under subcontracts in order to increase the likelihood of participation by certified businesses.
- A. **GOALS** - The MBE and WBE participation goals as stated earlier are based on the availability of M/WBEs currently certified by New York State and geographically located to be able to perform the work in the region where the project is located. The total dollar value of the Contract, scope of work, the supplies and equipment necessary to perform the project, are also considerations used to determine the percentage goals.
- B. **UTILIZATION** - The Contractor may count as M/WBE participation: subcontracting part of the Contract to certified firms or purchasing supplies and equipment used to perform the terms and conditions of the Contract from certified firms.

Upon a showing by the Contractor of every good faith effort to achieve the goal for M/WBE participation in the work, the State will waive a Contractor's failure to achieve the goal M/WBE participation.

- C. **MINORITY AND WOMEN-OWNED BUSINESS OFFICER** - The Contractor shall designate an Affirmative Action officer and assign the officer the responsibility and authority to monitor the M/WBE program for this Contract. The OGS' Office of Minority and Women-owned Business Enterprises' staff is available to help in identifying certified M/WBEs.
- D. **REQUIRED REPORTS** - The Contractor is required to submit a Utilization Plan (BDC-328) to the NYS Office of General Services within five (5) days after the opening of bids for construction Contracts exceeding \$100,000 and 14 days after notification of award for commodity and service Contracts exceeding \$25,000. The Contractor must also submit the MBE/WBE Letter of Intent to Participate (BDC-49). The Letter MBE/WBE of Intent to Participate is a commitment by

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the Contractor and the subcontractor/supplier that the terms and conditions for M/WBE participation on this Contract are agreed to. Any modifications or changes to the agreed participation by certified M/WBEs, over the term of the Contract, must be reported on a revised Utilization Plan

- E. **NONDISCRIMINATION** - The Contractor agrees not to discriminate on the basis of race, creed, color, national origin, gender, age, disability, or marital status, in any respect, against any potential subcontractor, supplier, other company, firm, or enterprise in any manner relating to the performance of this Contract

**POST AWARD**

The Contractor must submit to the Office of Minority and Women-owned Business Enterprises after notification of award, the following forms, by the 10<sup>th</sup> day of each month:

1. (BDC-58) Cumulative Monthly Payment Statements
2. (BDC-25) Monthly Affirmation of Income Payments

All questions regarding compliance to Article 15-A requirements or copies of the forms should be addressed to:

New York State Office of General Services  
  
Office of Minority and Women-owned Business Enterprises  
  
35<sup>th</sup> Floor, Room 3580  
  
Corning Tower Building  
  
Empire State Plaza  
  
Albany, NY 12242

The telephone numbers and addresses for New York State Department of Economic Development are as follows:

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

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Division of Minority and Women's Business Development

30 South Pearl Street

Albany, New York 12245

Telephone: (518) 292-5250

4. Confidentiality of Tax Information

(a) The Contractor will comply with all secrecy provisions of the New York State Tax Law governing the confidentiality of State tax information, and with all Department rules, policies and procedures implementing such provisions (see e.g., Tax Law Sections 202, 211.8, 295, 314, 437, 487, 514, 528, 697(e), 994, 1023[b], 1146, 1165, 1250, 1312[a], 1332[a], 1342, 1418, 1467, 1518, 1555, 1825, 3038).

Thus, except in accordance with proper judicial order or as otherwise provided by law. Contractor shall not divulge or make known in any manner the contents or any particulars set forth or disclosed in any Return or report required under or pursuant to the authority of the Tax Law. Computer files and their contents are covered by the same secrecy provisions as are physical documents.

(b) The Contractor will comply with the secrecy provisions of the Internal Revenue Code (26 USC Sections 6103, 7213, 7213A and 7431) governing the confidentiality of Federal tax information, and with all IRS rules, policies and procedures implementing such provisions (see Appendix G in this RFP).

(c) The Contractor shall cause all officers, employees, agents, partners and subcontractors engaged in providing services under this Agreement to sign the "Agreement to Adhere to the Secrecy Provisions of the Tax Law and the Internal Revenue Code "(DTF-202) and "Acknowledgement of Confidentiality of Internal Revenue Service Tax Return Information " (EN-202) in Appendix F and Appendix G, respectively, of this RFP.

5. Ethics Provisions

The Contractor shall comply with the requirements of Public Officers Law, §§ 73 and 74, Chapter 1 of the Laws of 2005, the Procurement Lobbying Reform Act of 2005, and other State statutes, rules and regulations establishing ethical standards for the conduct of business with New York State. Failure to comply with those provisions may result in termination of the Agreement, and/or other civil or criminal proceedings as required by law.

6. Independent Contractor

It is understood and agreed that the legal status of the Contractor, its agents, officers and employees under this Contract is that of an independent Contractor and, in no manner shall they be deemed employees of the Department, and therefore are not entitled to any of the

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benefits associated with such employment. The Contactor agrees, during the term of the Contract awarded under this RFP, to maintain at Contractor's expense those benefits to which its employees would otherwise be entitled by law, including health benefits, and all necessary insurance for its employees, including worker's compensation, disability and unemployment insurance, and to provide the Department with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, state and local taxes, and all FICA contributions.

7. Contract Approval

The Agreement will not be effective until it is approved by the New York State Attorney General and the Office of the New York State Comptroller.

8. Term of Agreement

The Agreement shall become effective following approval by the New York State Attorney General and the Office of the New York State Comptroller and shall continue for a four year term thereafter. The Agreement may be extended upon mutual agreement of the parties, for two (2) additional two (2) year terms.

The Agreement may include an extension of up to twelve (12) months at the end of the initial term of the Agreement or the extension period, as applicable, to provide for an orderly transition of services to a subsequent service provider (which may be the incumbent), at the sole discretion of the Department.

9. Termination or Expiration of the Contract and Transition Plan

- (a) The Department reserves the right at any time during the term of the Agreement to terminate the Agreement for convenience with six (6) months prior written notice to the Contractor without penalty or other early termination charges due, if determined to be in the best interest of the State.
- (b) The Department reserves the right at any time during the term of the Agreement to terminate the Agreement for cause due to material breach of the contract as defined therein, including but not limited to: failure to meet implementation dates or adhere to the secrecy provisions, violation of procurement lobbying act requirements, repeated performance problems, security breach, failure to comply with revised Tax Law Section 5-a or if the Contractor is otherwise deemed non-responsible.
- (c) At any time during the term of the Agreement, the Contractor and the Department may mutually agree to terminate the Agreement. At such time as termination is mutually agreed upon, the two parties shall negotiate satisfactory terms of termination.

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- (d) The Department reserves the right to terminate the Agreement immediately if the Contractor's financial stability is reasonably determined by the Department to be in question. In the event that the Contractor's LACE financial rating falls below a C- during the term of this Agreement, the State reserves the right to terminate this Agreement immediately upon written notice to the Contractor.
  - (e) Upon termination or expiration of the Agreement, the Contractor and the Department shall cooperate to develop and execute a transition plan that contains reasonable procedures for transition and time schedules for scaling down operations of the Contractor in order to allow program services to continue without interruption.
10. The Contractor must maintain adequate records as prescribed by the Department to substantiate all claims for payment and must make those records available to the Department for examination and copying upon request.
  11. The Contractor's processing and operations sites must be in compliance with applicable building codes and the Americans with Disabilities Act.
  12. All changes to the services and fees set forth in the RFP must be initiated through the Change Procedure as set forth in Appendix E of this RFP.
  13. All proposed fees are guaranteed for the first three (3) years of the initial term described in this RFP and adjustable thereafter on an annual basis, using the CPI-U methodology stated in Section X Financial Requirements. Any desired CPI-U change requests must be made within thirty calendar days prior to the end of the contract year.

For Module 2: All proposed fees are guaranteed not to increase for the first three (3) years of the base term described in this RFP. For renewal period(s) of the agreement, the Contractor will be limited by an escalation cap. The Contractor has the sole responsibility to submit to OGS a fee adjustment request which must include a copy of the index or other supporting documentation necessary to support the request. Such adjustment shall in no event exceed the lesser of five (5%) percent increase of the fee(s) or the percent increase in the latest copy of the "National Consumer Price Index for All Urban Consumers (CPI-U)", as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212.

14. A mutually agreed upon Implementation Plan as described in Section VIII of this RFP will be included as part of the Agreement.
15. The Department in its sole discretion may declare a material breach of the contract in the event that Contractor fails to materially meet a certification or implementation date as set forth in the Implementation Plan.

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16. Sections 105 and 106 of the State Finance Law require financial institutions holding deposits of State monies to pledge collateral with the Office of the New York State Comptroller to the extent deemed appropriate by the Comptroller.
17. A financial institution providing depository bank services must be insured by the FDIC through the term of the Agreement.
18. The method of compensation shall be by means of direct payment and/or compensating balances or a combination of the two, at the State's discretion. The State reserves the right to change the compensation method. The State agrees not to change the method of compensation at a frequency greater than once annually, except in extraordinary situations, as determined by the State. The State shall provide the Contractor with at least ninety (90) days advance notice of such change.
19. If the State elects to pay by direct payment, the State may choose to either offset the fee payment with Earnings Credits or request direct reimbursement from the Contractor (as described in Section X of this RFP).
20. Order of Precedence. This Agreement shall consist of the documents listed below. In the event of a conflict between or among the provisions of this Agreement, the following order of precedence shall control:
  - (a) "Appendix A" of the RFP, "Standard Clauses for New York State Contracts", attached hereto as Appendix A.
  - (b) DTF 202 (Module 1 only).
  - (c) Appendix B (Module 2 only).
  - (d) Written amendments and changes to the Agreement by the parties and approved, where necessary, by the New York State Attorney General and the Office of the New York State Comptroller.
  - (e) The main body of the Agreement, and the accompanying appendices and exhibits (except Appendix A, the RFP, the bidder's proposal and pre-bid question and answers).
  - (f) The RFP (excluding Appendix A), including any amendments and clarifications, including those addressed by the question and answers process.
  - (g) The Bidder's proposal, including any amendments and clarifications thereto.
  - (h) The Contractor's banking and/or service agreements, if any.
21. Performance Standards, Liquidated Damages and Reimbursements



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Categories of Performance Standards shall be those set forth in Section II of this RFP. The Performance Standards establish minimum levels at which the services are to be performed by the Contractor. Performance audits will be conducted by the Department to determine the Contractor's level of compliance with the Performance Standards. The Contractor's performance will be evaluated by applying a variety of generally accepted audit methodologies. Liquidated damages and/or reimbursements may be imposed by the Department for the Contractor's failure to perform in accordance with a Performance Standard.

22. Disaster Recovery/Fail Safe Operations

- (a) The Contractor shall develop and deliver to the Department for its review and approval, on or before a date as reasonably determined by the Department, and at no additional cost, a Disaster Recovery Plan for the program services provided under the Agreement. The Department's approval of the Disaster Recovery Plan shall not be unreasonably withheld.
- (b) The Contractor agrees to provide the Department with reasonable access to that portion of its Disaster Recovery Plan relevant to the services provided under the Agreement. The Contractor shall provide the Department with any reports or findings of any regulatory agency dealing with the Contractor's disaster recovery capabilities, unless it is prohibited from making such disclosure by law or by any such agency. The Contractor shall also make available any reports of its independent auditors relating to such plans. The Contractor shall provide the Department with reasonable access to any results of any tests of the Contractor's disaster recovery facilities conducted by the Contractor or any third party. The Contractor shall provide an annual briefing to the Department related to its disaster recovery strategy.
- (c) Contractor shall no later than twenty-four hours after the occurrence of an event requiring activation of the disaster recovery plan, inform the Department that the plan has been activated. At that time, Contractor shall provide the Department with a description of the nature and extent of the disaster, an assessment of the impact on all services provided pursuant to the Contract and a description of the specific recovery actions with their associated timeframes which have been or will be taken as part of the plan. Contractor will provide appropriate periodic updates of the recovery process as required by the Department.
- (d) Contractor agrees to provide the Department with any updates to the disaster recovery plan with respect to the services provided under the Contract, and/or any plans to implement recommendations resulting from routine testing of the disaster recovery plan. Contractor must maintain, test (at least once annually on a date as reasonably determined by the Department ), and update the plan as necessary throughout the duration of the Contract (including any extensions and/or transition periods). In addition, Contractor must inform the Department on an annual basis as to the status of disaster recovery operations.

23. Indemnification

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The Contractor shall fully indemnify and defend the State from all claims, suits, actions, judgments, liabilities, damages and costs (including legal fees and expenses) relating to personal injury or property damage to real or personal property caused by the intentional wrongful act, omission, or negligence of the Contractor, its officers, employees, agents or subcontractors, without limitation.

24. Subcontracting

The Contractor shall not enter into any material subcontracts without the Department's prior written approval. Contracts which the Department considers material shall include, but not be limited to, the following: those with a systems developer, software vendors, hardware vendors and debit card producers.

25. Financial Stability

To ensure uninterrupted services, the Contractor's continued financial stability shall be a material condition of the Agreement. The Department reserves the right to terminate the Agreement if the Contractor's financial stability is reasonably determined by the Department to be in question.

26. Procurement Lobbying Act

The Department reserves the right to terminate the contract in the event it is found that the certification filed by the bidder in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Department may exercise its termination right by providing written notification to the bidder in accordance with the written notification terms of the Agreement.

27. Mergers, Acquisitions or Consolidations

In the event of any merger, acquisition or consolidation involving the Contractor, the successor entity agrees to continue to perform all services under the Agreement.

28. Ownership of Data/Data Security

- a. All data under the Contract shall be and remain the property of the Department, and the Contractor must, during the term of the Contract (including any extensions and/or transition periods), provide the Department with access to any such data maintained by the Contractor.

The Contractor must, in accordance with applicable law and the instructions of the Department, maintain such data for the time period required by applicable law,

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exercise due care for the protection of data, and maintain appropriate data integrity safeguards against the deletion or alteration of such data.

Promptly after the termination or expiration of the Contract, the Contractor shall provide all such data still within its possession or that of its subcontractors to the Department, or sanitize such data, consistent with applicable law and instructions from the Department.

- b. Upon the Department 's reasonable request, Contractor shall correct, to the extent practicable, at Contractor's sole expense, data and/or image output that fail to achieve the Performance Standards.

29. Contractor Certification - Tax Law 5-A Amended April 26, 2006

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain Contractors awarded state Contracts for commodities, services and technology valued at more than \$100,000 to certify, to the Department of Taxation and Finance (DTF), that they are registered to collect New York State and local sales and compensating use taxes. The law applies to Contracts where the total amount of such Contractors' sales delivered into New York State are in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and Subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

This law also imposes upon certain Contractors the obligation to certify whether or not the Contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use taxes and Contractors must certify to DTF that each affiliate and subcontractor exceeding the \$300,000 sales threshold referenced above is registered with DTF to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving agency, from approving a Contract awarded to a Contractor Meeting the registration requirements but who has not registered in accordance with the law.

30. Vendor Responsibility

Article XI Section 163(4)(d) of the State Finance Law states that "service Contracts shall be awarded on the basis of best value to a responsive and responsible offerer." Upon identification of the Bidder with the highest evaluation score, the Department will evaluate the Bidder to ensure responsibility. In the event a Bidder is found to be non-responsible, the Bidder may be disqualified from award.

During the Contract term, Contractors must agree to evidence vendor responsibility substantially similar to, or superior to, its status as of the execution of the Contract awarded as a result of this RFP. The Contractor must further also agree to notify the Department promptly of any material change in vendor responsibility or if a change in ownership occurs. A review of

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vendor responsibility shall be undertaken prior to any Contract renewal/extension and the Department reserves the right to undertake such a review annually upon the anniversary date of any awarded Contract.

31. Designation of Prime Contact and Authorized Contract Negotiators

During the bid evaluation and Contract negotiation, the Department requires direct access to Bidder personnel who have full authority to make commitments on behalf of the Bidder. The Bidder must identify and certify a prime contact authorized to respond on behalf of the Bidder. The prime contact is responsible for responding to any evaluation clarification and for disseminating information to appropriate Bidder personnel.

Bidders must also identify individual(s) who will serve as authorized Contract negotiators and any restrictions under which their primary negotiators will operate. Any change in designation must be submitted in writing to the Department and include a revised form.

32. Required Financial Statements and Records

- (a) The Contractor shall provide to the Department, as and when it is provided to shareholders of the Contractor, an audited financial statement of the Contractor.
- (b) The Contractor shall provide annually, as it becomes available, the Contractor's Form 10-K, Annual Report pursuant to Section 13 or 15(d) of the Securities and Exchange Act of 1934 and any subsequent Form 8, Amendment to Application or Report filed pursuant to the Form 10-K.
- (c) The Contractor shall provide those portions of its Call Reports and quarterly operating results for each calendar quarter, as they become available, which may by law be disclosed to the public.
- (d) The Contractor shall provide Form 10-Q, Quarterly Report under Section 13 or 15(d) of the Securities Exchange Act of 1934 for each calendar quarter, as it becomes available.

33. Subcontractors

(a) In addition to the subcontracts described in Invariable Contract Condition item 24 above, the Department reserves the right to review and approve subcontracts directly related to the proposed services and/or products for the performance of contractual obligations. All agreements between the prime Contractor and subcontractor shall be by written contract. All such contracts shall contain provisions specifying that:

(1) The work being performed by the subcontractor must be in accordance with the terms of the Agreement between the Contractor and the Department;

(2) Nothing contained in such agreement shall impair the rights of the Department; and,

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- (3) Nothing contained under the contract between the Department and the Contractor shall create any contractual relationship between any subcontractor and the Department.
- (b) All subcontracts must contain provisions similar to those in the Agreement between the Department and the Contractor so that the provisions of any subcontract entered into by the Contractor are similar to, and not inconsistent with, the Agreement awarded as a result of this RFP.

34. Extension of use:

Any contract resulting from this bid solicitation may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State (the lead contracting State) and the contractor. Political subdivisions and other authorized entities within each participating State or governmental jurisdiction may also participate in any resultant contract if such State normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

**C. NEGOTIABLE TOPICS**

**The following Topics are subject to negotiation, but specific alternative language must be provided with the bidder's proposal** (see Section V – Evaluation Process, of this RFP, and requirement A. 1.2, above).

1. Licensed Software, Custom Software, and Documentation by the Department

(a) Licensed Software and Licensed Documentation

- 1 If the Contractor is the licensee or sub-licensee of third-party licensed software that the Department will use in connection with the Services performed under the Agreement, then the Contractor warrants that:
  - (i) such license or sub-license has not expired; and,
  - (ii) such license or sub-license allows the Department to use, execute, copy, display and distribute such software and documentation, for at least as long as the Contractor performs the services under the Agreement.
- 2 The Contractor grants the Department (including an agent, Contractor or outsourcer of the Department), without compensation, a perpetual, non-exclusive license to use, execute, copy, display and distribute for the Department's tax administration purposes, object code to pre-existing software created by the Contractor which is deemed necessary for the performance of the services covered by the Agreement.

(b) Custom Software

Upon final payment therefore, the Department shall own and possess all rights, title and interest in and to custom software created by the Contractor specifically for the Department under the Agreement, including, without limitation, all ownership and intellectual property rights.

2. Liquidated Damages

The service levels associated with the Performance Standards and the amount of Liquidated Damages and Reimbursements, as well as the procedure to impose Liquidated Damages shall be addressed in the Agreement. In the event that the Contractor fails to meet any Performance Standard, and as a result thereof the Department's normal business operations are materially interrupted, then, the Department shall be entitled to immediately obtain substitute services from a third party or perform the services in-house on an interim basis until that failure has been cured. The Contractor shall not be paid for the services affected by the failure to meet the Performance Standard if substitute services must be performed by a third party or the Department and shall be liable for any additional costs to the State for substitute services. If Liquidated Damages are assessed for any failure to meet the Performance Standards, the Contractor shall make payment prior to initiating any challenge through the dispute resolution process.

3. Dispute Resolution

The first step of dispute resolution will be through conference between the Department and the Contractor. The party initiating the process shall notify the other party in writing and set forth the issues for resolution and provide all necessary documentation. Unresolved disputes will be considered by the Commissioner of taxation and finance, or his designee, whose decision is final and binding on the Department. During this period all work required hereunder shall be performed. If the Contractor pursues any legal or equitable remedy outside the Department, the Contractor will continue to perform work in accordance with the direction of the Department until such proceedings may be concluded and will continue to be paid, less an amount attributable to the disputed work. Disputes that go to litigation must be pursued in a court of competent jurisdiction of the State of New York. New York law will govern the dispute and venue must be laid in Albany County, New York.

4. Force Majeure

Neither party (the Department or the Contractor) shall be liable for any failure or omission to carry out, perform, or observe any of the terms or conditions of the Agreement to the extent such is due to war, fires, lightning, floods or emergency conditions, acts of God, or any similar or

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dissimilar causes beyond the reasonable control of the party affected thereby, unless such act is solely due to the negligence of such party. Prompt written notice shall be given by the affected party to the other party of the existence of any such cause.

5. Program Enhancements

- (a) The Department may request that the Contractor provide enhancement services (through the Change Control process) which are beyond the scope of services identified in the RFP. However, the Department is under no obligation to ask the Contractor to provide enhancement services and reserves the right to develop and implement such program enhancements internally at the Department or to obtain such enhancement services from a third party. The Contractor agrees to work in good faith with the Department and any other involved party to develop such enhancements.
- (b) The Contractor will not be paid for such enhancement services performed internally at the Department or through a third party.

6. Most Favorable Terms

The Contractor agrees that all fees, terms, warranties and benefits provided and offered by the Contractor are substantially similar to the best equivalent terms being offered by the Contractor to any present governmental agency for services of similar size, scope and complexity. If during the term of the Agreement, the Contractor enters into an arrangement with any other similar government customer, including New York State Department of Taxation and Finance, providing greater benefits or more favorable terms for services of similar size, scope and complexity as the services provided the Department pursuant to the Agreement, then the Agreement shall thereupon be deemed amended to provide the same to the Department.

7. Staff Management

The Department shall have the right to request the removal of any Contractor manager or staff person assigned to the provision of services under the Agreement, for work related cause, provided that such cause is not one which is prohibited by law as a basis for terminating an employee.

8. Assignment of Rights and Duties

The Department may assign its rights or duties under the Agreement to another New York State agency without the prior express written consent of Contractor. Except as provided for in Appendix A – Standard Clauses for New York State Contracts (as found in Appendix A of this RFP), the Contractor shall not assign or subcontract to any other person or entity, any of its obligations under the Agreement, without the prior written consent of the Department.

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9. Personnel Changes by Contractor

- (a) The Contractor shall notify the Department of any and all planned personnel changes (including but not limited to terminations, reassignments and organizational restructuring) of managers responsible for the provision of services. Such notification must be received by the Department at least fourteen (14) days prior to the effective date of the change when feasible, or else as soon as possible after the change.
- (b) If the personnel change for a manager(s) is in the control of the Contractor, and the Department believes the result of such change will cause degradation of the services performed by Contractor, then the Department may pursue the dispute resolution process (as described in subsection 3 above) regarding such change.

10. Permission to Investigate

In the event that the Department determines it necessary to investigate evidence relative to a possible or actual 1) crime, or 2) breach of confidentiality or security (e.g. , loss of return documents, or loss of remittances), Contractor and its subcontractors shall cooperate fully with the Department to the extent permitted by law to investigate and identify the responsible individuals. Contractor and its subcontractors shall, to the extent permitted by law, make their employees and all relevant records, including personnel records and employee photographs, available to Department investigators upon request by the Department's Office of Deputy Inspector General. The Department may interview Contractor's employees and/or agents in connection with an investigation during normal business hours.

11. Implementation

The testing and acceptance criteria and performance measurements included in the Implementation Plan will be reasonably determined by the Department.

A mutually agreed upon Implementation Plan setting forth timetables for implementing the services will be included as part of the Contract.

The Department shall, in its sole and reasonable judgment, determine the number of implementation deliverables that it desires to test, the performance measures for an implementation deliverable, or the final implementation deliverable, the length of user acceptance testing and the means of testing such deliverables. Contractor may make recommendations to the Department regarding the performance measures, length of user acceptance testing, and the means of testing an implementation deliverable and/or the final implementation deliverable, but the Department shall have final responsibility for determining such criteria.

User acceptance testing shall begin as set forth in the implementation plan or when Contractor informs the Department, in writing, that an implementation deliverable, or the final



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implementation deliverable, complies with the relevant performance measures, and is ready for user acceptance testing by the Department. The Department shall have a defined number of days, as set forth in the implementation plan, from receipt of such notice to test such deliverable for compliance with the performance measures. The Department shall provide Contractor, within 15 business days after the expiration of the test period, with a notice of defects, a notice of acceptance or a notice of certification (applicable to the final implementation deliverable), as applicable. Upon receipt of a notice of defects, Contractor shall diligently proceed to correct all defects and thereafter notify the Department that such deliverable is again ready for user acceptance testing. This process shall continue until the Department delivers to Contractor a notice of acceptance for the implementation deliverable, or a notice of Certification for the final implementation deliverable, as applicable.

12. Intellectual Property Rights Indemnity

- (a) The Contractor shall fully indemnify, defend and save harmless the Department, its officers, employees, and agents, from and against any and all losses, liabilities, judgments, damages, awards and costs (including legal fees and expenses), arising out of or related to any claim of, or action for, infringement of a patent, or of any copyright, trademark, trade secret or other third party intellectual property right. in each case to the extent caused by intellectual property provided by or through the Contractor and used to perform the services, without limitation. The foregoing provisions of this paragraph shall not apply to the Department's misuse or modification of such intellectual property, the Department's failure to use corrections or enhancements made available by the Contractor, or the Department's use of the intellectual property in combination with any product or information not provided by the Contractor, where such misuse, modification or combination gives rise to the infringement. The State shall give the Contractor:
- (1) Prompt written notice of any action, claim or threat of infringement suit, or other suit;
  - (2) The opportunity to take over, settle or defend such action, claim, or suit at the Contractor's sole expense; and
  - (3) Assistance in the defense of any such action at the expense of the Contractor.
- (b) In the event that an action at law or in equity is commenced against the Department arising out of the performance of the Agreement by the Contractor, its officers, partners, employees, subcontractors, or agents and if the Contractor is of the opinion that the allegations in such action, in whole or in part, are not covered by the indemnification and defense provisions set forth herein, the Contractor, after receiving notice of such action, shall immediately notify the Department, in writing, specifying to what extent the Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Agreement.

13. Limitation on Liability

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Except where the Agreement provides that the Contractor's liability is without limitation, limits on Contractor liability shall be addressed in the contract.

- a. Liquidated Damages/Reimbursements do not represent an exclusive remedy and the Contractor shall be liable for actual direct damages of the Department in an amount not to exceed the greater of three times (3X) the annual amount payable by the Department under the Contract in the year giving rise to the liability, or the data recovery and/or development costs and any excess operating costs to cover moving the services in-house or to a subsequent Contractor. The liquidated Damages/Reimbursements shall be addressed to the amount of direct damages subject to this liability limit.
- b. Damages resulting from Contractor's (i) willful, malicious, intentional misconduct, (ii) Intentional tortuous conduct, or (iii) gross negligence, shall be without limitation.

#### 14. Information Security Breach and Notification Law

Contractor expressly agrees to comply with the provisions of Chapter 442 of the Laws of 2005, as amended by Chapter 491 of the Laws of 2005, commonly known as the Information Security Breach and Notification Act (the "ISBNA" or "Act"), and any future amendments thereto. Contractor shall comply with all obligations imposed by the notice provisions of the ISBNA with respect to any computerized "private information" (as defined in the Act) received, handled, processed, uploaded, or maintained by Contractor on behalf of the Department under this Agreement (hereinafter, the "DTF Information"). In the event of a "breach of the security of the system" (as defined by the Act), Contractor shall immediately notify the Department upon discovery or notification of such breach. Such notice to the Department shall be made in one of the following ways: by contacting the Contractor's Department liaison for the Agreement by e-mail to [dave\\_beals@tax.state.ny.us](mailto:dave_beals@tax.state.ny.us), or by telephone, 518-457-0604. Contractor shall immediately commence an investigation, in cooperation with the Department, to determine the scope of the breach and to restore the security of the system. To the extent the Department determines that further notifications are required to be sent out pursuant to the Act, Contractor shall be responsible for providing such notifications to all required recipients including, in accordance with New York State policy, non-New York State residents whose private information is reasonably believed to have been exposed as a result of the breach, and all costs associated with providing such notices shall be borne by the Contractor. It is expressly agreed that Contractor shall be obligated to receive authorization from the Department *prior* to making any notifications to any individuals, the State Office of Cyber Security and Critical Infrastructure Coordination, the State Consumer Protection Board, the Attorney General's Office or any consumer reporting agencies of a breach of the security of the system, or concerning making any determination to delay notifications due to law enforcement investigations. Contractor agrees that the Department shall have final approval over the form, content, mode of transmission, and timing of any notice to be provided concerning a breach of the security of the

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15. Ownership of Data/Data Security

In the event that any data is lost or destroyed because of any act or omission of Contractor or any noncompliance with the obligations of Contractor under the contract, then Contractor shall, at its own expense, use its best efforts to reconstruct such data as soon as feasible. In such event, Contractor shall reimburse the Department for any costs incurred by the Department in correcting, recreating, restoring or reprocessing such data or in providing assistance therewith.

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- C Image Index Layout

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**Exhibit A**

**VOLUMES**

Paper Refund Draft Issuances

Table A-1-a

Graph A-1-b

Total PIT Refund Paper Drafts Paid

Table A-2-a

Graph A-2-b

PIT Refund Direct Deposits

Table A-3-a

Graph A-3-b

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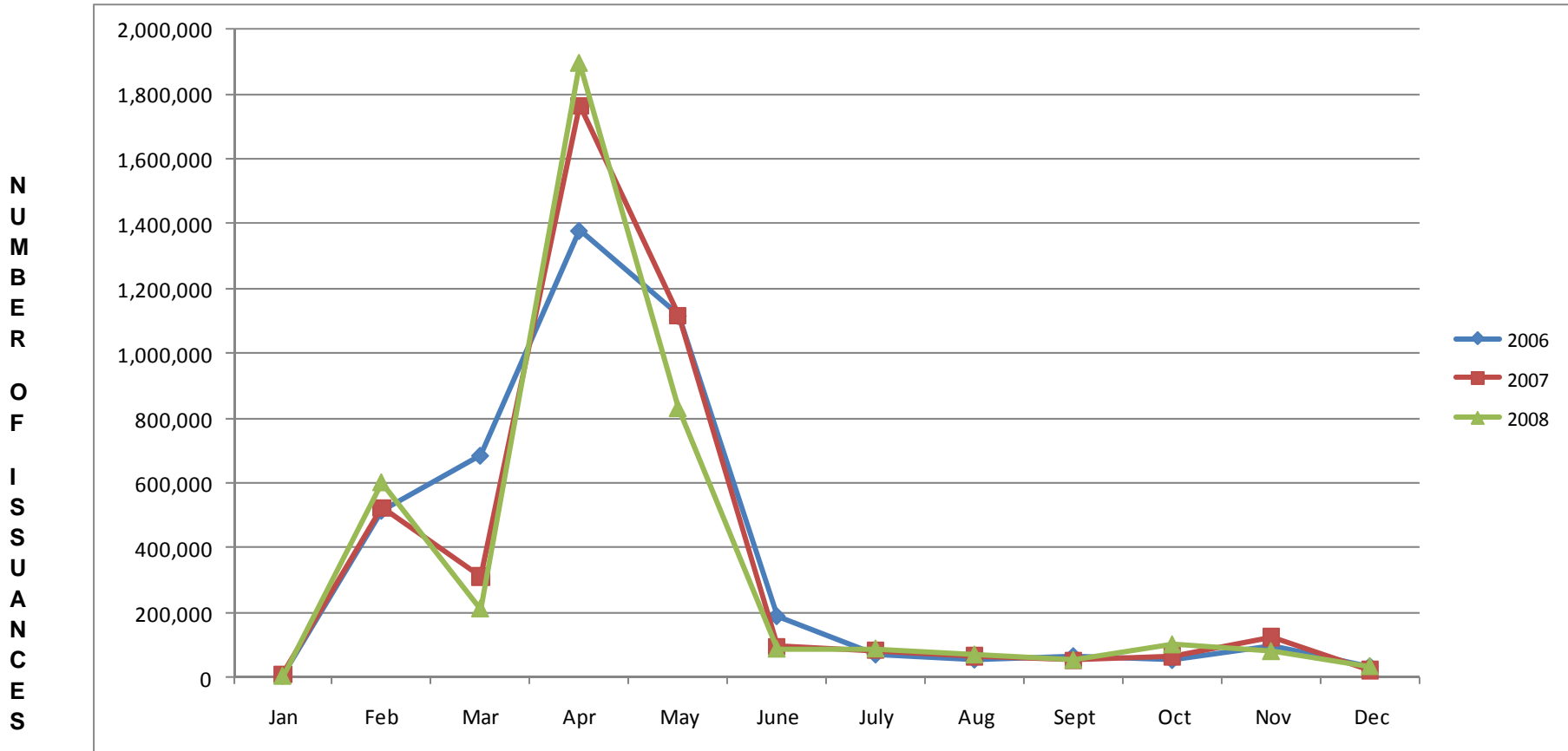
**PIT PAPER REFUND ISSUANCES**  
**Table A-1-a**

Calendar Year 2006			Calendar Year 2007			Calendar Year 2008		
Month	Number of Issuances	Dollar Value	Month	Number of Issuances	Dollar Value	Month	Number of Issuances	Dollar Value
January	4,450	1,860,126	January	9,740	\$5,724,371	January	3,372	\$1,487,854
February	514,892	348,801,068	February	522,705	\$367,137,407	February	600,332	\$431,200,064
March	684,943	425,596,318	March	311,389	\$327,930,086	March	211,052	\$181,965,198
April	1,379,918	857,362,032	April	1,765,114	\$1,241,422,912	April	1,893,807	\$1,390,772,625
May	1,117,182	859,286,931	May	1,116,904	\$932,905,314	May	828,652	\$786,892,590
June	189,113	192,557,573	June	95,021	\$136,881,144	June	86,962	\$122,368,977
July	70,437	90,608,344	July	82,924	\$102,795,484	July	87,646	\$105,278,907
August	54,718	77,925,648	August	65,751	\$89,397,331	August	69,284	\$105,832,394
September	65,319	105,780,486	September	53,097	\$128,102,815	September	52,489	\$106,766,541
October	53,284	101,965,119	October	64,975	\$116,691,088	October	100,583	\$321,452,589
November	98,177	361,611,720	November	124,516	\$585,200,136	November	79,374	\$507,401,984
December	33,912	209,446,780	December	21,964	\$118,635,056	December	33,127	\$186,743,720
<b>TOTALS</b>	<b>4,266,345</b>	<b>3,632,802,145</b>	<b>TOTALS</b>	<b>4,234,100</b>	<b>\$4,152,823,144</b>	<b>TOTALS</b>	<b>4,046,680</b>	<b>\$4,248,163,443</b>

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**PIT PAPER REFUND ISSUANCES**

Table A-1-b



**PIT REFUND TOTAL PAPER DRAFTS PAID**

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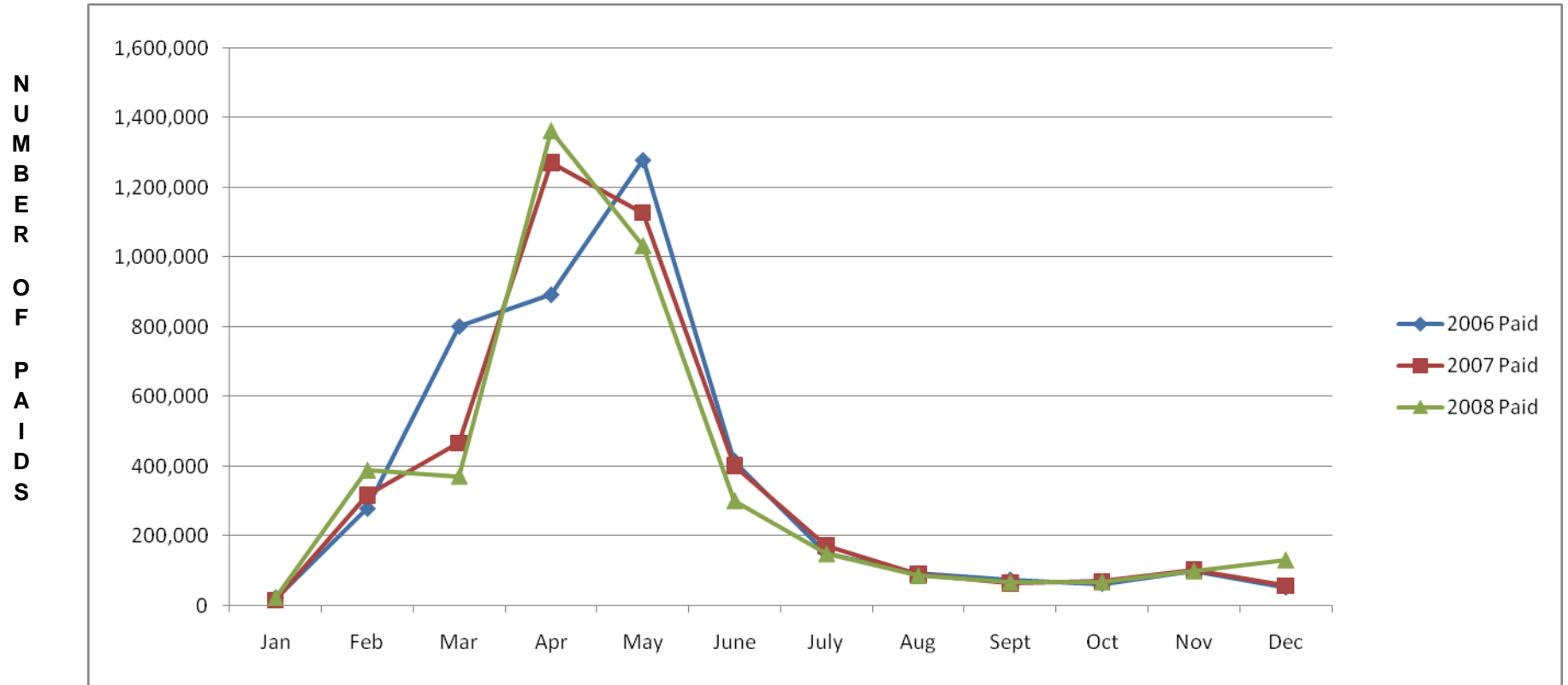
Calendar Year 2006			Calendar Year 2007			Calendar Year 2008		
Month	Number of Paid	Dollar Value	Month	Number of Paid	Dollar Value	Month	Number of Paid	Dollar Value
January	21,074	\$101,439,577	January	15,813	\$50,848,495	January	22,291	\$66,416,299
February	277,248	\$202,795,559	February	315,531	\$211,648,955	February	388,003	\$295,596,155
March	801,011	\$516,428,419	March	466,076	\$437,596,816	March	370,884	\$285,124,416
April	892,223	\$571,686,630	April	1,271,148	\$928,229,557	April	1,361,854	\$1,039,704,452
May	1,279,012	\$921,721,502	May	1,127,277	\$910,596,589	May	1,032,255	\$904,659,996
June	413,983	\$359,825,510	June	401,854	\$374,301,815	June	300,567	\$282,836,279
July	148,809	\$129,587,049	July	170,926	\$166,273,470	July	148,121	\$166,343,831
August	91,101	\$104,597,561	August	89,775	\$103,969,368	August	85,556	\$102,486,140
September	72,736	\$105,211,036	September	64,429	\$126,010,564	September	66,100	\$114,842,414
October	61,764	\$98,442,889	October	68,987	\$119,678,686	October	67,856	\$194,099,208
November	98,773	\$296,011,581	November	101,854	\$436,017,071	November	99,081	\$465,765,357
December	50,814	\$257,166,960	December	56,834	\$222,132,134	December	130,733	\$44,823,386
<b>TOTALS</b>	<b>4,208,548</b>	<b>\$3,664,914,272</b>	<b>TOTALS</b>	<b>4,150,504</b>	<b>\$4,087,303,519</b>	<b>TOTALS</b>	<b>4,073,301</b>	<b>\$3,962,697,933</b>



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**PIT REFUND PAPER DRAFTS PAID**

**Table A-2-b**



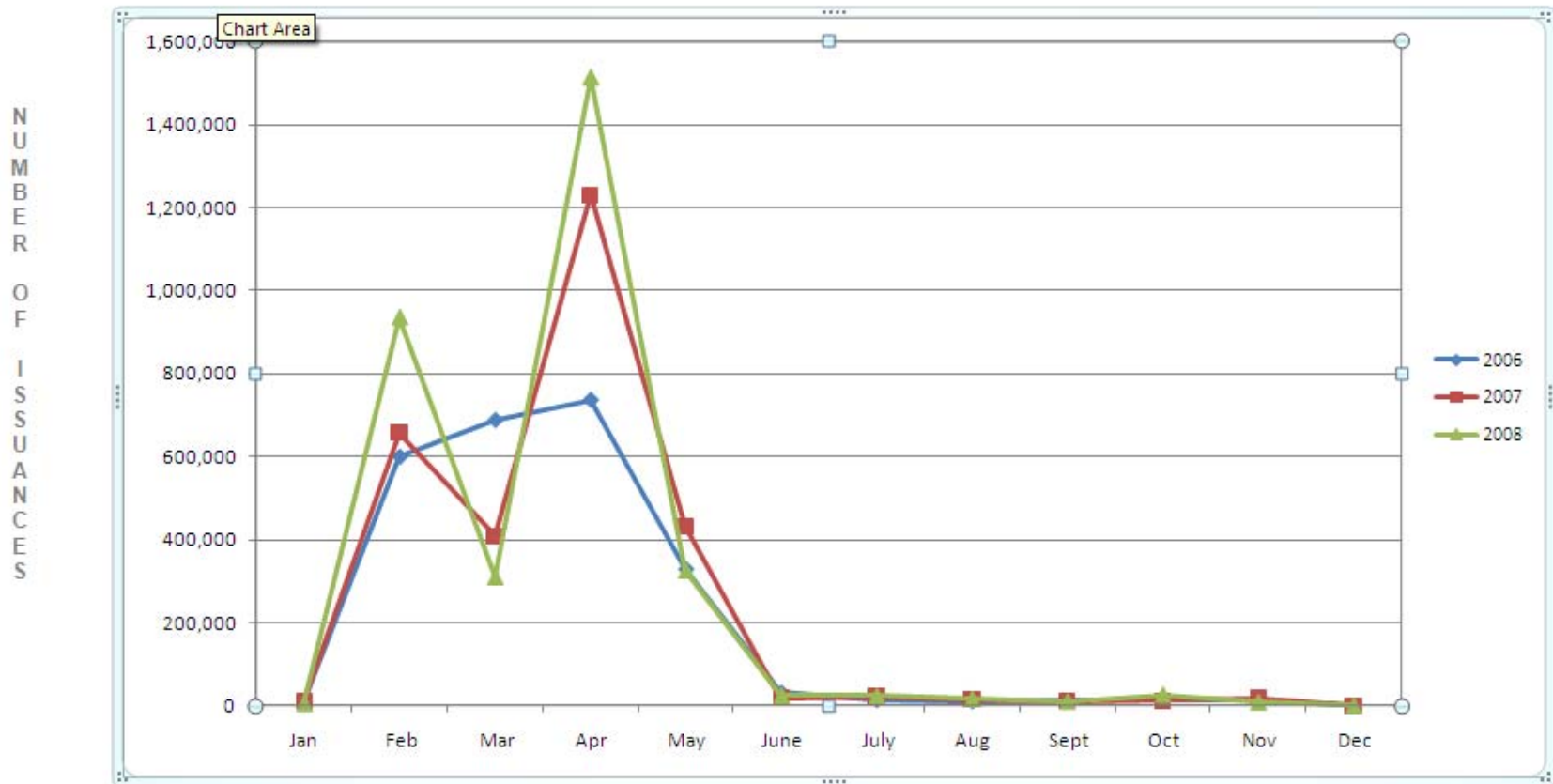
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<b>PIT REFUND DIRECT DEPOSITS</b>								
<b>Table A-3-a</b>								
Calendar Year 2006			Calendar Year 2007			Calendar Year 2008		
Month	Number of Issuances	Dollar Value	Month	Number of Issuances	Dollar Value	Month	Number of Items	Dollar Value
January	8,988	\$4,933,655	January	9,969	\$6,719,818	January	5,116	\$2,094,724
February	600,302	\$447,761,844	February	657,330	\$599,020,973	February	935,897	\$931,740,741
March	688,486	\$551,015,115	March	408,844	\$542,070,342	March	310,094	\$362,055,434
April	737,115	\$624,919,922	April	1,230,498	\$1,191,971,995	April	1,513,892	\$1,506,959,676
May	329,129	\$311,748,981	May	432,430	\$433,564,681	May	325,392	\$369,251,827
June	30,875	\$46,962,956	June	18,311	\$36,171,755	June	24,772	\$35,826,792
July	13,940	\$19,757,286	July	21,359	\$34,592,325	July	24,014	\$30,150,527
August	10,835	\$17,311,590	August	13,874	\$29,137,766	August	16,779	\$33,616,354
September	11,819	\$21,495,728	September	10,733	\$22,981,686	September	10,633	\$21,800,780
October	11,566	\$24,539,195	October	12,036	\$28,550,753	October	26,738	\$84,519,452
November	12,075	\$48,840,091	November	18,052	\$74,322,040	November	8,666	\$60,752,310
December	0	\$0	December	0	\$0	December	0	\$0
<b>TOTALS</b>	<b>2,455,130</b>	<b>\$2,119,286,363</b>	<b>TOTALS</b>	<b>2,833,436</b>	<b>\$2,999,104,134</b>	<b>TOTALS</b>	<b>3,201,993</b>	<b>\$3,438,768,617</b>

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**PIT REFUND DIRECT DEPOSITS**

**Table A-3-b**



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**Exhibit B**

**FILE FORMATS**

B-1 PIT Refund Draft Issuance File Layout

B-2 PIT Refund Paid Draft File Layout

B-3 Direct Deposit Initiation File Layout

B-4 Direct Deposit Reject File Layout

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Exhibit B-1

FILE: RM33CM  
Created by: RM33  
Input to: Contractor

ASCII File  
Transmission

Record Size: 93 Character Data Records  
Blocking Factor: 250 Records/Block

<b>PIT REFUND DRAFT ISSUANCE FILE</b>
---------------------------------------

DATA ITEM	CHAR.	PIC.	FIELD COMMENTS
Header Record:			First Record on File
Record ID	1	X(4)	Constant - value is "1HDR"
File ID	5	X(6)	Constant - value is "RM33CM"
Header - Date	11	9(8)	MMDDCCYY
Header-Time	19	9(8)	
Filler	27	X	
Account Number	28	X(9)	
Filler	37	X(54)	
Check Record:			Infinite Number of Check Records per File
Check Number	1	9(8)	
Check Amount	9	9(8)V99	
Files Reference Number	19	X(8)	Sent back to DTF in RM38IN
Processing File Year	27	X(1)	Sent back to DTF in RM38IN
Filler	28	X(3)	Blank for Unisys - Empire will have Data
Filler	31	X(18)	Blank
Check Payee Name	49	X(39)	
Check issue date	88	9(6)	
Summary Record:			
Record ID	1	X(4)	Constant - value is "1EOF"
Total Amount of Checks	5	9(10)V99	
Total Check Count	17	9(9)	
Filler	26	X(68)	Blank

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Exhibit B-2

FILE: RM38IN  
Created by:  
Contractor  
Input to: RM38  
Record Size: 46 Character Data  
Records  
Blocking Factor: 250 Records/Block

ASCII  
File      Transmission

<b>PIT REFUND PAID DRAFT FILE</b>
-----------------------------------

DATA ITEM	CHAR.	PIC.	FIELD COMMENTS
Header Record:			First Record on File
Program Id	1	X(4)	Constant - value is "RM38" or "CUML"  MMDDCCYY
Source ID	5	X(4)	
Header - Date	9	9(8)	
Header-Time	17	X(9)	
Filler	26	X(21)	
Data Record:			Infinite Number of Data Records per File
Check Number	1	9(8)	Format: MMDDCCYY  Supplied by DTF in RM33CM Supplied by DTF in RM33CM Blank for Unisys - Empire will have Data Blank
Date Paid	9	9(8)	
Files Reference Number	17	X(8)	
Processing File Year	25	X(1)	
Filler	26	X(3)	
Filler	29	X(18)	
HASH Record:			
Record ID	1	X(4)	Constant - value is "HASH" Blank Number of Data Records in file - do not count HEADER and HASH records Blank
Filler	5	X(2)	
HASH value	7	9(8)	
Filler	15	X(32)	

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Direct Deposit Initiation File Layout

Exhibit B-3

DATA ITEM	CHAR	PIC.	FIELD COMMENTS
<b>File Header Record:</b>			
FILLER	1	X(13)	VALUE '101 021000021'.
ORIGIN	14	X(10)	VALUE '9741270001'.
TransDate	24	9(6)	Format is YYMMDD
Trans Time	30	9(4)	Format is HHMM
ID Modifier	34	X	VALUE 'A'.
FILLER	35	X(6)	VALUE '094101'
Destination	41	X(23)	VALUE to be Contractors name
ORIGIN-Name	64	X(23)	VALUE 'NY STATE'.
Reference	87	X(8)	VALUE SPACES.
<b>Batch Header Record:</b>			
FILLER	1	X(4)	VALUE '5200'.
Company Name	5	X(16)	VALUE 'NY STATE'.
FILLER	21	X(20)	VALUE SPACE.
Company ID	41	X(10)	VALUE '9741270001'.
Entry Code	51	X(3)	VALUE 'PPD'.
Entry Type	54	X(10)	VALUE 'TAX REFUND'.
DESCR-DATE	64	X(6)	VALUE SPACE.
Effective Date	70	9(6)	Format YYMMDD
Settlement	76	X(3)	VALUE SPACE.
Status Code	79	X	VALUE '1'.
DFI ID	80	9(8)	VALUE 0.
Batch Number	88	9(7)	VALUE 1.
<b>Entry DTL Record:</b>			
FILLER	1	X	VALUE '6'.
Transx Code	2	9(2)	VALUE 22 for checking, 32 for savings
ABA No	4	9(9)	Bank routing number
DFI Acct No	13	X(17)	Taxpayer account number
Refund Amount	30	9(8)V99	
FILLER	40	X(15)	VALUE SPACE.
Taxpayer Name	55	X(22)	
FILLER	77	X(2)	VALUE SPACE.

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Record Ind	79	X	VALUE '0'.
Trace Number			
Refno	80	9(8)	Voucher Number
Count	88	9(7)	Consecutive sequence number starting at 1
<b>Batch Control Record:</b>			
FILLER	1	X(4)	VALUE '8200'.
Entry Count	5	9(6)	Record count of all direct deposits on the file
Entry Hash	11	9(10)	Cumulative total of 1st 8 char. of ABA no.
Debit Amount	21	9	VALUE 0 - Not used
Credit Amount	33	9	Total refund amount on file
Company ID	45	X(10)	VALUE '9741270001'.
FILLER	55	X(25)	VALUE SPACE.
DFI No	80	9(8)	VALUE 0.
Number Code	88	9(7)	VALUE 1.
<b>File Control Record:</b>			
FILLER	1	X	VALUE '9'.
Batch Count	2	9(6)	VALUE 1.
Block Count	8	9(6)	VALUE 1.
Entry Count	14	9(8)	Record count of all direct deposits on the file
Entry Hash	22	9(10)	Cumulative total of 1st 8 char. of ABA no.
Debit Amount	32	9	VALUE 0
Credit Amount	44	9	Total refund amount on file
FILLER	56	X(39)	VALUE SPACE.



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Direct Deposit Reject File Layout

Exhibit B-4

DATA ITEM	CHAR	PIC.	FIELD COMMENTS
<b>File Header Record:</b>			
FILLER	1	X(13)	VALUE '101 021000021'.
ORIGIN	14	X(10)	VALUE '9741270001'.
TransDate	24	9(6)	Format is YYMMDD
Trans Time	30	9(4)	Format is HHMM
ID			
Modifier	34	X	VALUE 'A'.
FILLER	35	X(6)	VALUE '094101'
Destination	41	X(23)	VALUE to be Contractors name
ORIGIN- Name	64	X(23)	VALUE 'NY STATE'.
Reference	87	X(8)	VALUE SPACES.
<b>Batch Header Record:</b>			
FILLER	1	X(4)	VALUE '5200'.
Company Name	5	X(16)	VALUE 'NY STATE'.
FILLER	21	X(20)	VALUE SPACE.
Company ID	41	X(10)	VALUE '9741270001'.
Entry Code	51	X(3)	VALUE 'PPD'.
Entry Type	54	X(10)	VALUE 'TAX REFUND'.
DESCR-DATE Effective Date	64	X(6)	VALUE SPACE.
Settlemen t	70	9(6)	Format YYMMDD
Status Code	76	X(3)	VALUE SPACE.
DFI ID	79	X	VALUE '1'.
Batch Number	80	9(8)	VALUE 0.
	88	9(7)	VALUE 1.
<b>Entry DTL Record:</b>			
FILLER	1	X	VALUE '6'.
Transx Code	2	9(2)	VALUE 22 for checking, 32 for savings
ABA No	4	9(9)	Bank routing number
DFI Acct No	13	X(17)	Taxpayer account number

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Refund Amount	30	9(8)V99	
FILLER	40	X(15)	VALUE SPACE.
Taxpayer Name	55	X(22)	
FILLER	77	X(2)	VALUE SPACE.
Record Ind Trace Number	79	X	VALUE '0'.
Refno	80	9(8)	Voucher Number Consecutive sequence number starting at 1
Count	88	9(7)	
<b>Batch Control Record:</b>			
FILLER	1	X(4)	VALUE '8200'.
Entry Count	5	9(6)	Record count of all direct deposits on the file
Entry Hash	11	9(10)	Cumulative total of 1st 8 char. of ABA no.
Debit Amount	21	9(10)V9	
Credit Amount	33	9	VALUE 0 - Not used
Company ID	45	9(10)V9	
FILLER	55	9	Total refund amount on file
DFI No	80	X(10)	VALUE '9741270001'.
Number Code	88	X(25)	VALUE SPACE.
		9(8)	VALUE 0.
		9(7)	VALUE 1.
<b>File Control Record:</b>			
FILLER	1	X	VALUE '9'.
Batch Count	2	9(6)	VALUE 1.
Block Count	8	9(6)	VALUE 1.
Entry Count	14	9(8)	Record count of all direct deposits on the file
Entry Hash	22	9(10)	Cumulative total of 1st 8 char. of ABA no.
Debit Amount	32	9(10)V9	
Credit Amount	44	9	VALUE 0.
FILLER	56	9(10)V9	Total refund amount on file
		X(39)	VALUE SPACE.

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**Exhibit C**

**IMAGE INDEXING**

C Image Index Layout

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**EXHIBIT C**  
**Image Index Layout**

Field Name	Picture	Character Position	Comments/Format/Validation
<b>Image File Header Record</b>			
Header Pathname	x(31)	1 - 31	Full pathname – images/dnnn/nn/nnnnnnnn.nnn” Where: dnnn = the letter “d” plus a three digit sequential number – the directory. nn = two digit sequential number – the subdirectory nnnnnnnn = the image file identifier (tracking number) .nnn = the image file suffix
Tracking Number	x(12)	32 - 43	Alpha-numeric tracking number, left justified
Filler	x(26)	44 - 69	Spaces
Image File bytes	x(9)	70 - 78	Size (in bytes) of the image file
Filler	x(2)	79 - 80	Spaces

Field Name	Picture	Character Position	Comments/Format/Validation
<b>Image File Record</b>			
Record Identifier	x(3)	1 - 3	Value “090”
Tracking Number	x(12)	4 - 15	Alpha-numeric tracking number
Tax Type	9(2)	16 - 17	Alpha initials for tax type (e.g., PT for IT-204 forms and PI for all other forms)
Processing Year	x(4)	18 - 21	Current processing year (e.g., 2006)
Return Type	x(3)	22 - 24	Primary Return Type Code (provided by DTF during implementation)
Form Type	x(8)	25 - 32	Form Code (to be provided by the Department)
New Form Side	x(1)	33	Rotation control character (f, g, or h). f= rotate image 90 degrees before it is displayed; g=rotate image 270 degrees before it is displayed; and h=no rotation is needed before it is displayed.
Filler	x(3)	34 - 36	Spaces
File Location	x(32)	37 - 68	Full pathname – images/dnnn/nn/nnnnnnnnnnnn.nnn” Where: dnnn = the letter “d” plus a three digit sequential number – the directory. nn = two digit sequential number – the

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			subdirectory nnnnnnnnnnnn = the image file identifier (tracking number) .nnn = the image file suffix
Filler	x(55)	69 - 123	Spaces
External ID	x(11)	124 - 134	Taxpayer ID, or VOID – left justified
Filler	x(24)	135 - 158	Spaces

**Appendix A**

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June 2006

**Appendix A**  
**STANDARD CLAUSES FOR NYS CONTRACTS**

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

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

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment 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

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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.

**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-



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off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

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

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

(b) PRIVACY NOTIFICATION. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

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(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

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

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

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

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

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

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

**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 State Finance Law §165. (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

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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 -- 7<sup>th</sup> 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>

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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. PURCHASES OF APPAREL.** In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

**NEW YORK STATE OFFICE OF GENERAL SERVICES  
PROCUREMENT SERVICES GROUP**

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**APPENDIX B**

**GENERAL SPECIFICATIONS**

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**PLEASE RETAIN THIS DOCUMENT FOR FUTURE REFERENCE**

**NOTE: Clauses that will not be applicable in this RFP, PIT Refund Controlled Disbursement, Direct Deposit and Debit Card Services will be designated by a strike-through and marked 'RESERVED'. Bidders are advised that a number of reserved clauses cover issues that are included in the body of the RFP and will be the requirement for the OGS centralized contract.**

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**GENERAL**

1. **APPLICABILITY** The terms and conditions set forth in this Appendix B are expressly incorporated in and applicable to the resulting procurement contracts let by the Office of General Services Procurement Services Group, or let by any other Authorized User where incorporated by reference in its Bid Documents. Captions are intended as descriptive and are not intended to limit or otherwise restrict the terms and conditions set forth herein.

2. **GOVERNING LAW** This procurement, the resulting contract and any purchase orders issued hereunder shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise, and actions or proceedings arising from the contract shall be heard in a court of competent jurisdiction in the State of New York.

3. **ETHICS COMPLIANCE** All Bidders/Contractors and their employees must comply with the requirements of Sections 73 and 74 of the Public Officers Law, other State codes, rules, regulations and executive orders establishing ethical standards for the conduct of business with New York State. In signing the Bid, Bidder certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relationships, etc., involving New York State and/or its employees. Failure to comply with those provisions may result in disqualification from the Bidding process, termination of contract, and/or other civil or criminal proceedings as required by law.

4. **CONFLICT OF TERMS** Unless otherwise set forth in the procurement or contract documents, conflicts among documents shall be resolved in the following order of precedence:

a. **Appendix A** (Standard Clauses for NYS Contracts)

b. **Mini-Bid Project Definition** if applicable and in accordance with the terms and conditions of the Back-Drop Contract.

c. **Contract and other writing(s)** setting forth the final agreements, clarifications and terms between the Bid Documents and Contractor's Bid. In the latter circumstance, clarifications must specifically note in writing what was offered by the Contractor and what was accepted by the State. If not, such clarifications shall be considered last in the order of precedence under this paragraph.

d. **Bid Documents** (Other than Appendix A).

i. Bid Specifications prepared by the Authorized User.

ii. Appendix B (General Specifications).

iii. Incorporated Contract Appendices, if any, following the order of precedence as stated for Contract above.

e. **Contractor's Bid or Mini-Bid Proposal**.

f. **Unincorporated Appendices** (if any).

5. **DEFINITIONS** Terms used in this Appendix B shall have the following meanings:

**AFFILIATE** Any individual or other legal entity, (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) that effectively controls another company in which (a) the Bidder owns more than 50% of the ownership; or (b) any individual or other legal entity which owns more than 50% of the ownership of the Bidder. In addition, if a Bidder owns less than 50% of the ownership of another legal entity, but directs or has the right to direct such entity's daily operations, that entity will be an Affiliate.

**AGENCY OR AGENCIES** The State of New York, acting by or through one or more departments, boards, commissions, offices or institutions of the State of New York.

**ATTORNEY GENERAL** Attorney General of the State of New York.

**AUTHORIZED USER(S)** Agencies, or any other entity authorized by the laws of the State of New York to participate in NYS centralized contracts (including but not limited to political subdivisions, public authorities, public benefit corporations and certain other entities set forth in law), or the State of New York acting on behalf of one or more such Agencies or other entities, provided that each such Agency or other entity shall be held

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solely responsible for liabilities or payments due as a result of its participation.

**BID OR BID PROPOSAL** An offer or proposal submitted by a Bidder to furnish a described product or a solution, perform

services or means of achieving a practical end, at a stated price for the stated Contract term. As required by the Bid Documents, the Bid or proposal may be subject to modification through the solicitation by the Agency of best and final offers during the evaluation process prior to recommendation for award of the Contract.

**BIDDER/OFFERER** Any individual or other legal entity (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) which submits a Bid in response to a Bid Solicitation. The term Bidder shall also include the term "offeror." In the case of negotiated Contracts, "Bidder" shall refer to the "Contractor."

**BID DOCUMENTS** Writings by the State setting forth the scope, terms, conditions and technical specifications for a procurement of Product. Such writings typically include, but are not limited to: Invitation for Bids (IFB), Request for Quotation (RFQ), Request for Proposals (RFP), addenda or amendments thereto, and terms and conditions which are incorporated by reference, including but not limited to, Appendix A (Standard Clauses for NYS Contracts), Appendix B, (General Specifications). Where these General Specifications are incorporated in negotiated Contracts that have not been competitively Bid, the term "Bid Documents" shall be deemed to refer to the terms and conditions set forth in the negotiated Contract and associated documentation.

**BID SPECIFICATION** A written description drafted by the Authorized User setting forth the specific terms of the intended procurement, which may include: physical or functional characteristics, the nature of a commodity or construction item, any description of the work to be performed, Products to be provided, the necessary qualifications of the Bidder, the capacity and capability of the Bidder to successfully carry out the proposed Contract, or the process for achieving specific results and/or anticipated outcomes or any other requirement necessary to perform work. Where these General Specifications are incorporated in negotiated Contracts that have not been competitively Bid, the term "Bid Specifications"

shall be deemed to refer to the terms and conditions set forth in the negotiated Contract and associated documentation.

**COMMISSIONER** Commissioner of OGS, or in the case of Bid Specifications issued by an Authorized User, the head of such Authorized User or their authorized representative.

**COMPTROLLER** Comptroller of the State of New York.

**CONTRACT** The writing(s) which contain the agreement of the Commissioner and the Bidder/Contractor setting forth the total legal obligation between the parties as determined by applicable rules of law, and which most typically include the following classifications of public procurements:

**a. Agency Specific Contracts** Contracts where the specifications for a Product or a particular scope of work are described and defined to meet the needs of one or more Authorized User(s).

**b. Centralized Contracts** Single or multiple award Contracts where the specifications for a Product or general scope of work are described and defined by the Office of General Services to meet the needs of Authorized Users. Centralized Contracts may be awarded through multiple awards or through adoption of another jurisdiction's contract or on a sole source, single source, emergency or competitive basis. Once established, procurements may be made from the selected Contractor(s) without further competition or Mini-Bid unless otherwise required by the Bid Specifications or Contract Award Notification.

**c. Back-Drop Contracts** Multiple award Centralized Contracts where the Office of General Services defines the specifications for a Product or general scope of work to meet the needs of Authorized Users. Bids may be submitted either at a date and time certain or may be accepted on a continuous or periodic recruitment basis, as set forth in the Bid Specifications. Selection of a Contractor(s) from among Back-Drop contract holders for an actual Product, project or particular scope of work may subsequently be made on a single or sole source basis, or on the basis of a Mini-Bid among qualified Back-Drop contract holders, or such other method as set forth in the Bid Document.

**d. Piggyback Contract** A Contract let by any department, agency or instrumentality of the United States government, or

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any department, agency, office, political subdivision or instrumentality of any state or state(s) which is adopted and extended for use by the OGS Commissioner in accordance with the requirements of the State Finance Law.

**e. Contract Letter** A letter to the successful Bidder(s) indicating acceptance of its Bid in response to a solicitation. Unless otherwise specified, the issuance of a Letter of Acceptance forms a Contract but is not an order for Product, and Contractor should not take any action with respect to actual

Contract deliveries except on the basis of Purchase Orders sent from Authorized User(s).

**CONTRACT AWARD NOTIFICATION** An announcement to Authorized Users that a Contract has been established.

**CONTRACTOR** Any successful Bidder(s) to whom a Contract has been awarded by the Commissioner.

**DOCUMENTATION** The complete set of manuals (e.g., user, installation, instruction or diagnostic manuals) in either hard or electronic copy, which are necessary to enable an Authorized User to properly test, install, operate and enjoy full use of the Product.

**EMERGENCY** An urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk.

**ENTERPRISE** The total business operations in the United States of Authorized User (s) without regard to geographic location where such operations are performed or the entity actually performing such operations on behalf of Authorized User.

**ENTERPRISE LICENSE** A license grant of unlimited rights to deploy, access, use and execute Product anywhere within the Enterprise up to the maximum capacity stated on the Purchase Order or in the Contract.

**ERROR CORRECTIONS** Machine executable software code furnished by Contractor which corrects the Product so as to conform to the applicable warranties, performance standards and/or obligations of the Contractor.

**GROUP** A classification of Product, services or technology which is designated by OGS.

**INVITATION FOR BIDS (IFB)** A type of Bid Document which is most typically used where requirements can be stated and award will be made based on lowest price to the responsive and responsible Bidder(s).

**LICENSED SOFTWARE** Software transferred upon the terms and conditions set forth in the Contract. "Licensed Software" includes error corrections, upgrades, enhancements or new releases, and any deliverables due under a maintenance or service contract (e.g., patches, fixes, PTFs, programs, code or data conversion, or custom programming).

**LICENSEE** One or more Authorized Users who acquire Product from Contractor by issuing a Purchase Order in accordance with the terms and conditions of the Contract; provided that, for purposes of compliance with an individual license, the term "Licensee" shall be deemed to refer separately to the individual Authorized User(s) who took receipt of and who is executing the Product, and who shall be solely responsible for performance and liabilities incurred. In the case of acquisitions by State Agencies, the Licensee shall be the State of New York.

**LICENSE EFFECTIVE DATE** The date Product is delivered to an Authorized User. Where a License involves Licensee's right to copy a previously licensed and delivered Master Copy of a Program, the license effective date for additional copies shall be deemed to be the date on which the Purchase Order is executed.

**LICENSOR** A Contractor who transfers rights in proprietary Product to Authorized Users in accordance with the rights and obligations specified in the Contract.

**MINI-BID PROJECT DEFINITION** A Bid Document containing project specific Bid Specifications developed by or for an

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Authorized User which solicits Bids from Contractors previously qualified under a Back-Drop Contract.

**MULTIPLE AWARD** A determination and award of a Contract in the discretion of the Commissioner to more than one responsive and responsible Bidder who meets the requirements of a specification, where the multiple award is made on the grounds set forth in the Bid Document in order to satisfy multiple factors and needs of Authorized Users (e.g., complexity of items, various manufacturers, differences in performance required to accomplish or produce required end results, production and distribution facilities, price, compliance with delivery requirements, geographic location or other pertinent factors).

**NEW PRODUCT RELEASES (Product Revisions)** Any commercially released revisions to the licensed version of a Product as may be generally offered and available to Authorized Users. New releases involve a substantial revision of functionality from a previously released version of the Product.

**OGS** The New York State Office of General Services.

**PROCUREMENT RECORD** Documentation by the Authorized User of the decisions made and approach taken during the procurement process and during the contract term.

**PRODUCT** A deliverable under any Bid or Contract which may include commodities, services and/or technology. The term "Product" includes Licensed Software.

**PROPRIETARY** Protected by secrecy, patent, copyright or trademark against commercial competition.

**PURCHASE ORDER** The Authorized User's fiscal form or format that is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, electronic Purchase Order, or other authorized instrument).

**REQUEST FOR PROPOSALS (RFP)** A type of Bid Document that is used for procurements where factors in addition to cost are considered and weighted in awarding the contract and where the method of award is "best value," as defined by the State Finance Law.

**REQUEST FOR QUOTATION (RFQ)** A type of Bid Document that can be used when a formal Bid opening is not required (e.g., discretionary, sole source, single source or emergency purchases).

**RESPONSIBLE BIDDER** A Bidder that is determined to have financial and organizational capacity, legal authority, satisfactory previous performance, skill, judgment and integrity, and that is found to be competent, reliable and experienced, as determined by the Commissioner. For purposes of being deemed responsible, a Bidder must also be determined to be in compliance with Sections 139-j and 139-k of the State Finance Law relative to restrictions on contacts during the procurement process and disclosure of contacts and prior findings of non-responsibility under these statutes.

**RESPONSIVE BIDDER** A Bidder meeting the specifications or requirements prescribed in the Bid Document or solicitation, as determined by the OGS Commissioner.

**SINGLE SOURCE** A procurement where two or more Bidders can supply the required Product, and the Commissioner may award the contract to one Bidder over the other.

**SITE** The location (street address) where Product will be executed or services delivered.

**SOLE SOURCE** A procurement where only one Bidder is capable of supplying the required Product.

**SOURCE CODE** The programming statements or instructions written and expressed in any language understandable by a human being skilled in the art which are translated by a language compiler to produce executable machine Object Code.

**STATE** State of New York.

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**SUBCONTRACTOR** Any individual or other legal entity, (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) who has entered into a contract, express or implied, for the performance of a portion of a Contract with a Contractor.

**TERMS OF LICENSE** The terms and conditions set forth in the Contract that are in effect and applicable to a Purchase Order at the time of order placement.

**VIRUS** Any computer code, whether or not written or conceived by Contractor, that disrupts, disables, harms, or otherwise impedes in any manner the operation of the Product, or any other associated software, firmware, hardware, or computer system (such as local area or wide-area networks), including aesthetic disruptions or distortions, but does not include security keys or other such devices installed by Product manufacturer.

**BID SUBMISSION**

**6. INTERNATIONAL BIDDING** All offers (tenders), and all information and Product required by the solicitation or provided as explanation thereof, shall be submitted in English. All prices shall be expressed, and all payments shall be made, in United States Dollars (\$US). Any offers (tenders) submitted which do not meet the above criteria will be rejected.

**7. BID OPENING** Bids may, as applicable, be opened publicly. The Commissioner reserves the right at any time to postpone or cancel a scheduled Bid opening.

**8. BID SUBMISSION** All Bids are to be packaged, sealed and submitted to the location stated in the Bid Specifications. Bidders are solely responsible for timely delivery of their Bids to the location set forth in the Bid Specifications prior to the stated Bid opening date/time.

~~A Bid return envelope, if provided with the Bid Specifications, should be used with the Bid sealed inside. If the Bid response does not fit into the envelope, the Bid envelope should be attached to the outside of the sealed box or package with the Bid inside. If using a commercial delivery company that requires use of their shipping package or envelope, Bidder's sealed Bid, labeled as detailed below, should be placed within the shipper's sealed envelope to ensure that the Bid is not prematurely opened.~~

~~All Bids must have a label on the outside of the package or shipping container outlining the following information:~~

~~\_\_\_\_\_ "**BID ENCLOSED (bold print, all capitals)**"~~

~~\_\_\_\_\_ • **Group Number**~~

~~\_\_\_\_\_ • **IFB or RFP Number**~~

~~\_\_\_\_\_ • **Bid Submission date and time"**~~

~~In the event that a Bidder fails to provide such information on the return Bid envelope or shipping material, the receiving entity reserves the right to open the shipping package or envelope to determine the proper Bid number or Product group, and the date and time of Bid opening. Bidder shall have no claim against the receiving entity arising from such opening and such opening shall not affect the validity of the Bid or the procurement.~~

~~Notwithstanding the receiving agency's right to open a Bid to ascertain the foregoing information, Bidder assumes all risk of late delivery associated with the Bid not being identified, packaged or labeled in accordance with the foregoing requirements.~~

~~All Bids must be signed by a person authorized to commit the Bidder to the terms of the Bid Documents and the content of the Bid (offer).~~

**9. FACSIMILE SUBMISSIONS** Unless specifically prohibited by the terms of the Bid Specifications, facsimile Bids may be

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~~SUBMITTED AT THE SOLE OPTION AND RISK OF THE BIDDER. Only the FAX number(s) indicated in the Bid Specifications may be used. Access to the facsimile machine(s) is on a "first come, first serve" basis, and the Commissioner bears no liability or responsibility and makes no guarantee whatsoever with respect to the Bidder's access to such equipment at any specific time. Bidders are solely responsible for submission and receipt of the entire facsimile Bid by the Authorized User prior to Bid opening and must include on the first page of the transmission the total number of pages transmitted in the facsimile, including the cover page. Incomplete, ambiguous or unreadable transmissions in whole or in part may be rejected at the sole discretion of the Commissioner. Facsimile Bids are fully governed by all conditions outlined in the Bid Documents and must be submitted on forms or in the format required in the Bid Specifications, including the executed signature page and acknowledgment.~~

~~**10. AUTHENTICATION OF FACSIMILE BIDS** The act of submitting a Bid by facsimile transmission, including an executed signature page or as otherwise specified in the Bid Documents, shall be deemed a confirming act by Bidder which authenticates the signing of the Bid.~~

~~**11. LATE BIDS** For purposes of Bid openings held and conducted by OGS, a Bid must be received in such place as may be designated in the Bid Documents or if no place is~~

~~specified in the OGS Mailroom located in the Empire State Plaza, Albany, New York 12242, at or before the date and time established in the Bid Specifications for the Bid opening. For purposes of Bid openings held and conducted by Authorized Users other than OGS, the term late Bid is defined as a Bid not received in the location established in the Bid Specifications at or before the date and time specified for the Bid opening.~~

~~Any Bid received at the specified location after the time specified will be considered a late Bid. A late Bid shall not be considered for award unless: (i) no timely Bids meeting the requirements of the Bid Documents are received or, (ii) in the case of a multiple award, an insufficient number of timely Bids were received to satisfy the multiple award; and acceptance of the late Bid is in the best interests of the Authorized Users. Bids submitted for continuous or periodic recruitment contract awards must meet the submission requirements associated with their specifications. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of the Authorized User shall not excuse late Bid submissions. Similar types of delays, including but not limited to, bad weather, or security procedures for parking and building admittance shall~~

~~not excuse late Bid submissions. Determinations relative to Bid timeliness shall be at the sole discretion of the Commissioner.~~

~~**12. BID CONTENTS** Bids must be complete and legible. All Bids must be signed. All information required by the Bid Specifications must be supplied by the Bidder on the forms or in the format specified. No alteration, erasure or addition is to be made to the Bid Documents. Changes may be ignored by the Commissioner or may be grounds for rejection of the Bid. Changes, corrections and/or use of white-out in the Bid or Bidder's response portion of the Bid Document must be initialed by an authorized representative of the Bidder. Bidders are cautioned to verify their Bids before submission, as amendments to Bids or requests for withdrawal of Bids received by the Commissioner after the time specified for the Bid opening, may not be considered.~~

~~**13. EXTRANEOUS TERMS** Bids must conform to the terms set forth in the Bid Documents, as extraneous terms or material deviations (including additional, inconsistent, conflicting or alternative terms) may render the Bid non-responsive and may result in rejection of the Bid.~~

Extraneous term(s) submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, contracts or other documents) that are attached or referenced with submissions shall not be considered part of the Bid or resulting Contract, but shall be deemed included for informational or promotional purposes only.

Only those extraneous terms that meet all the following requirements may be considered as having been submitted as part of the Bid:

- a. Each proposed extraneous term (addition, deletion, counter-offer, deviation, or modification) must be specifically enumerated in a writing which is not part of a pre-printed form; and
- b. The writing must identify the particular specification requirement (if any) that Bidder rejects or proposes to modify by inclusion of the extraneous term; and



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c. The Bidder shall enumerate the proposed addition, counter offer, modification or deviation from the Bid Document, and the reasons therefore.

No extraneous term(s), whether or not deemed "material," shall be incorporated into a Contract or Purchase Order unless submitted in accordance with the above and the Commissioner or Authorized User expressly accepts each such term(s) in writing. Acceptance and/or processing of the Bid shall not constitute such written acceptance of Extraneous Term(s).

**14. CONFIDENTIAL/TRADE SECRET MATERIALS**

a. **Contractor** Confidential, trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission by the Bidder. Marking the Bid as "confidential" or "proprietary" on its face or in the document header or footer shall not be considered by the Commissioner or Authorized User to be sufficient without specific justification as to why disclosure of particular information in the Bid would cause substantial injury to the competitive position of the Bidder. Bidders/Contractors intending to seek an exemption from disclosure of these materials under the Freedom of Information Law must request the exemption in writing, setting forth the reasons for the claimed exemption. Acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures. Properly identified information that has been designated confidential, trade secret, or proprietary by the Bidder will not be disclosed except as may be required by the Freedom of Information Law or other applicable State and federal laws.

b. **Commissioner or Authorized User** Contractor further warrants, covenants and represents that any confidential information obtained by Contractor, its agents, Subcontractors, officers, distributors, resellers or employees in the course of performing its obligations, including without limitation, security procedures, business operations information, or commercial proprietary information in the possession of the State or any Authorized User hereunder or received from another third party, will not be divulged to any third parties. Contractor shall not be required to keep confidential any such material that is publicly available through no fault of Contractor, independently developed by Contractor without reliance on confidential information of the Authorized User, or otherwise obtained under the Freedom of Information Act or other applicable New York State laws and regulations. This warranty shall survive

termination of this Contract. Contractor further agrees to take appropriate steps as to its agents, Subcontractors, officers, distributors, resellers or employees regarding the obligations arising under this clause to insure such confidentiality.

**15. RELEASE OF BID EVALUATION MATERIALS** Requests concerning the evaluation of Bids may be submitted under the Freedom of Information Law. Information, other than statistical or factual tabulations or data such as the Bid Tabulation, shall only be released as required by law after Contract award. Bid Tabulations are not maintained for all procurements. Names of Bidders may be disclosed after Bid opening upon request. Written requests should be directed to the Commissioner.

**16. FREEDOM OF INFORMATION LAW** During the evaluation process, the content of each Bid will be held in confidence and details of any Bid will not be revealed (except as may be required under the Freedom of Information Law or other State law). The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. This exception would be effective both during and after the evaluation process. If the Bid contains any such trade secret or other confidential or proprietary information, it must be accompanied in the Bid with a written request to the Commissioner to not disclose such information. Such request must state with particularity the reasons why the information should not be available for disclosure and must be provided at the time of submission of the Bid. Notations in the header, footer or watermark of the Bid Document will not be considered sufficient to constitute a request for non-disclosure of trade secret or other confidential or proprietary information. Where a Freedom of Information request is made for trademark or other confidential or proprietary information, the Commissioner reserves the right to determine upon written notice to the Bidder whether such information qualifies for the exemption for disclosure under the law. Notwithstanding the above, where a Bid tabulation is prepared and Bids publicly opened, such Bid tabulation shall be available upon request.

~~**17. PREVAILING WAGE RATES – PUBLIC WORKS AND BUILDING SERVICES CONTRACTS** If any portion of work being Bid is subject to the prevailing wage rate provisions of the Labor Law, the following shall apply:~~

~~a. **"Public Works" and "Building Services" – Definitions**~~

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~~— i. **Public Works** Labor Law Article 8 applies to contracts for public improvement in which laborers, workers or mechanics are employed on a “public works” project (distinguished from public “procurement” or “service” contracts). The State, a public benefit corporation, a municipal corporation (including a school district), or a commission appointed by law must be a party to the Contract. The wage and hours provision applies to any work performed by Contractor or Subcontractors.~~

~~— ii. **Building Services** Labor Law Article 9 applies to Contracts for building service work over \$1,500 with a public agency, that: (i) involve the care or maintenance of an existing building, or (ii) involve the transportation of office furniture or equipment to or from such building, or (iii) involve the transportation and delivery of fossil fuel to such building, and (iv) the principal purpose of which is to furnish services through use of building service employees.~~

~~**b. Prevailing Wage Rate Applicable to Bid Submissions** A copy of the applicable prevailing wage rates to be paid or provided are annexed to the Bid Documents. Bidders must submit Bids which are based upon the prevailing hourly wages, and supplements in cash or equivalent benefits (i.e., fringe benefits and any cash or non-cash compensation which are not wages, as defined by law) that equal or exceed the applicable prevailing wage rate(s) for the location where the work is to be performed. Bidders may not submit Bids based upon hourly wage rates and supplements below the applicable prevailing wage rates as established by the New York State Department of Labor. Bids that fail to comply with this requirement will be disqualified.~~

~~**c. Wage Rate Payments / Changes During Contract Term** The wages to be paid under any resulting Contract shall not be less than the prevailing rate of wages and supplements as set forth by law. It is required that the Contractor keep informed of all changes in the Prevailing Wage Rates during the Contract term that apply to the classes of individuals supplied by the Contractor on any projects resulting from this Contract, subject to the provisions of the Labor Law. Contractor is solely liable for and must pay such required prevailing wage adjustments during the Contract term as required by law.~~

~~**d. Public Posting & Certified Payroll Records** In compliance with Article 8, Section 220 of the New York State Labor Law:~~

~~— i. **Posting** The Contractor must publicly post on the work site, in a prominent and accessible place, a legible schedule of the prevailing wage rates and supplements.~~

~~— ii. **Payroll Records** Contractors and Subcontractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. For public works contracts over \$25,000 where the Contractor maintains no regular place of business in New York State, such records must be kept at the work site. For building services contracts, such records must be kept at the work site while work is being performed.~~

~~— iii. **Submission of Certified Payroll Transcripts for Public Works Contracts Only** Contractors and Subcontractors on public works projects must submit monthly payroll transcripts to the Authorized User that has prepared or directs the preparation of the plans and specifications for a public works project, as set forth in the Bid Specifications. For Mini-Bid solicitations, the payroll records must be submitted to the entity preparing the agency Mini-Bid project specification. For “agency specific” Bids, the payroll records should be submitted to the entity issuing the purchase order. For all other OGS Centralized Contracts, such records should be submitted to the individual agency issuing the purchase order(s) for the work. Upon mutual agreement of the Contractor and the Authorized User, the form of submission may be submitted in a specified disk format acceptable to the Department of Labor provided: 1) the Contractor/Subcontractor retains the original records; and, (2) an original signed letter by a duly authorized individual of the Contractor or Subcontractor attesting to the truth and accuracy of the records accompanies the disk. This provision does not apply to Article 9 of the Labor Law building services contracts.~~

~~— iv. **Records Retention** Contractors and Subcontractors must preserve such certified transcripts for a period of three years from the date of completion of work on the awarded contract.~~

~~**Day's Labor** Eight hours shall constitute a legal day's work for all classes of employees in this state except those engaged in farm and domestic service unless otherwise provided by law.~~

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~~No laborers, workmen or mechanics in the employ of the Contractor, Subcontractor or other person doing or contracting to do all or part of the work contemplated by the Contract shall be permitted or required to work more than eight hours in any one calendar day or more than five calendar days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. "Extraordinary emergency" shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the NYS Commissioner of Labor for the preservation of the Contract site or for the protection of the life and limb of the persons using the Contract site.~~

**18. TAXES**

a. Unless otherwise specified in the Bid Specifications or Contract, the quoted Bid price includes all taxes applicable to the transaction.

b. Purchases made by the State of New York and certain non-State Authorized Users are exempt from New York State and local sales taxes and, with certain exceptions, federal excise taxes. To satisfy the requirements of the New York State Sales tax exemption, either the Purchase Order issued by a State Agency or the invoice forwarded to authorize payment for such purchases will be sufficient evidence that the sale by the Contractor was made to the State, an exempt organization under Section 1116 (a) (1) of the Tax Law. Non-State Authorized Users must offer their own proof of exemption upon request. No person, firm or corporation is, however, exempt from paying the State Truck Mileage and Unemployment Insurance or Federal Social Security taxes, which remain the sole responsibility of the Bidder/Contractor.

c. Pursuant to Revised Tax Law 5-a, Contractor will be required to furnish sales tax certification on its behalf and for its affiliates, and subcontractors for Contracts with a value greater than \$100,000 in accordance with provisions of the law.

d. Purchases by Authorized Users other than the State of New York may be subject to certain taxes which were not included in the Bid price, and in those instances the tax should be

computed based on the Contract price and added to the invoice submitted to such entity for payment.

~~**19. EXPENSES PRIOR TO CONTRACT EXECUTION** The Commissioner and any Authorized User(s) are not liable for any costs incurred by a Vendor, Bidder, or Contractor in the preparation and production of a Bid, Mini-Bid or best and final offers or for any work performed prior to Contract execution.~~

**20. ADVERTISING RESULTS** The prior written approval of the Commissioner is required in order for results of the Bid to be used by the Contractor as part of any commercial advertising. The Contractor shall also obtain the prior written approval of the Commissioner relative to the Bid or Contract for press or other media releases.

**21. PRODUCT REFERENCES**

a. **"Or Equal"** In all Bid Specifications the words "or equal" are understood to apply where a copyrighted, brand name, trade name, catalog reference, or patented Product is referenced. References to such specific Product are intended as descriptive, not restrictive, unless otherwise stated. Comparable Product will be considered if proof of compatibility is provided, including appropriate catalog excerpts, descriptive literature, specifications and test data, etc. The Commissioner's decision as to acceptance of the Product as equal shall be final.

b. **Discrepancies in References** In the event of a discrepancy between the model number referenced in the Bid Specifications and the written description of the Products which cannot be reconciled, with respect to such discrepancy, then the written description shall prevail.

**22. REMANUFACTURED, RECYCLED, RECYCLABLE OR RECOVERED MATERIALS**

Upon the conditions specified in the Bid Specifications and in accordance with the laws of the State of New York, Contractors are encouraged to use recycled, recyclable or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health, welfare, safety requirements or in the Bid Specifications. Contractors are further encouraged to offer remanufactured Products to the maximum extent practicable without jeopardizing the performance or intended end use of the

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~~Product and unless such use is precluded due to health, welfare, safety requirements or by the Bid Specifications. Where such use is not practical, suitable, or permitted by the Bid Specifications, Contractor shall deliver new materials in accordance with the "Warranties" set forth below.~~

~~Items with recycled, recyclable, recovered, refurbished or remanufactured content must be identified in the Bid or Bidder will be deemed to be offering new Product.~~

~~**23. PRODUCTS MANUFACTURED IN PUBLIC INSTITUTIONS** Bids offering Products that are manufactured or produced in public institutions will be rejected.~~

~~**24. PRICING**~~

~~**a. Unit Pricing** If required by the Bid Specifications, the Bidder should insert the price per unit specified and the price extensions in decimals, not to exceed four places for each item unless otherwise specified, in the Bid. In the event of a discrepancy between the unit price and the extension, the unit price shall govern unless, in the sole judgment of the Commissioner, such unit pricing is obviously erroneous.~~

~~**b. Net Pricing** Unless otherwise required by the Bid Specifications, prices shall be net, including transportation, customs, tariff, delivery and other charges fully prepaid by the Contractor to the destination(s) indicated in the Bid Specifications, subject to the cash discount.~~

~~**c. "No Charge" Bid** When Bids are requested on a number of Products as a Group or Lot, a Bidder desiring to Bid "no charge" on a Product in the Group or Lot must clearly indicate such. Otherwise, such Bid may be considered incomplete and be rejected, in whole or in part, at the discretion of the Commissioner.~~

~~**d. Educational Pricing** All Products to be supplied for educational purposes that are subject to educational discounts shall be identified in the Bid and such discounts shall be made available to qualifying institutions.~~

~~**e. Third Party Financing** If Product acquisitions are financed through any third party financing, Contractor may be required as a condition of Contract Award to agree to the terms and conditions of a "Consent & Acknowledgment Agreement" in a form acceptable to the Commissioner.~~

~~**f. Best Pricing Offer** During the Contract term, if substantially the same or a smaller quantity of a Product is sold by the Contractor outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local governmental entity, the price under this Contract, at the discretion of the Commissioner, shall be immediately reduced to the lower price.~~

~~Price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after:~~

~~**(i) GSA Changes:** Where NYS Net Prices are based on an approved GSA Schedule, the date the approved GSA Schedule pricing decreases during the Contract term; or~~

~~**(ii) Commercial Price List Reductions:** Where NYS Net Prices are based on a discount from Contractor's list prices, the date Contractor lowers its pricing to its customers generally or to similarly situated government customers during the Contract term; or~~

~~**(iii) Special Offers/Promotions Generally:** Where Contractor generally offers more advantageous special price promotions or special discount pricing to other customers during the Contract term for a similar quantity, and the maximum price or discount associated with such offer or promotion is better than the discount or Net Price otherwise available under this Contract, such better price or discount shall apply for similar quantity transactions under this Contract for the life of such general offer or promotion; and~~

~~**(iv) Special Offers/Promotions to Authorized Users:** Contractor may offer Authorized Users, under either this Contract or any other Contracting vehicle, competitive pricing which is lower than the NYS Net Price set forth herein at any time during the Contract term and such lower pricing shall not be applied as a global price reduction under the Contract pursuant to the foregoing paragraph (iii).~~

~~Unless otherwise specified in the Bid Specifications, Contractor may offer lower prices or better terms (see Modification of Contract Terms) on any specific Purchase Order(s) from any~~



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~~Authorized User without being in conflict with, or obligation to comply on a global basis, with the terms of this clause.~~

~~**g. Best and Final Prices** As specified in the Bid Documents and Contract, a Contractor may be solicited at the time of issuance of a Purchase Order or Mini-Bid award for best and final pricing for the Product or service to be delivered to the Authorized User. Contractors are encouraged to reduce their pricing upon receipt of such request.~~

**25. DRAWINGS**

~~**a. Drawings Submitted With Bid** When the Bid Specifications require the Bidder to furnish drawings and/or plans, such drawings and/or plans shall conform to the mandates of the Bid Documents and shall, when approved by the Commissioner, be considered a part of the Bid and of any resulting Contract. All symbols and other representations appearing on the drawings shall be considered a part of the drawing.~~

~~**b. Drawings Submitted During the Contract Term** Where required to develop, maintain and deliver diagrams or other technical schematics regarding the scope of work, Contractor shall do so on an ongoing basis at no additional charge, and must, as a condition of payment, update drawings and plans during the Contract term to reflect additions, alterations, and deletions. Such drawings and diagrams shall be delivered to the Authorized User's representative.~~

~~**c. Accuracy of Drawings Submitted** All drawings shall be neat and professional in manner and shall be clearly labeled as to locations and type of product, connections and components. Drawings and diagrams are to be in compliance with accepted drafting standards. Acceptance or approval of such plans shall not relieve the Contractor from responsibility for design or other errors of any sort in the drawings or plans, or from its responsibility for performing as required, furnishing product, services or installation, or carrying out any other requirements of the intended scope of work.~~

~~**26. SITE INSPECTION** Where a site inspection is required by the Bid Specifications or Project Definition, Bidder shall be required to inspect the site, including environmental or other conditions for pre-existing deficiencies that may affect the~~

~~installed Product, equipment, or environment or services to be provided and, which may affect Bidder's ability to properly deliver, install or otherwise provide the required Product. All inquiries regarding such conditions shall be made in writing. Bidder shall be deemed to have knowledge of any deficiencies or conditions which such inspection or inquiry might have disclosed. Bidder must provide a detailed explanation with its Bid if additional work is required under this clause in order to properly complete the delivery and installation of the required Product or provide the requested service.~~

~~**27. PROCUREMENT CARD** The State has entered into an agreement for purchasing card services. The Purchasing Card enables Authorized Users to make authorized purchases directly from a Contractor without processing a Purchase Orders or Purchase Authorizations. Purchasing Cards are issued to selected employees authorized to purchase for the Authorized User and having direct contact with Contractors. Cardholders can make purchases directly from any Contractor that accepts the Purchasing Card.~~

~~—The Contractor shall not process a transaction for payment through the credit card clearinghouse until the purchased products have been shipped or services performed. Unless the cardholder requests correction or replacement of a defective or faulty Product in accordance with other Contract requirements, the Contractor shall immediately credit a cardholder's account for products returned as defective or faulty.~~

**28. SAMPLES**

~~**a. Standard Samples** Bid Specifications may indicate that the Product to be purchased must be equal to a standard sample on display in a place designated by the Commissioner and such sample will be made available to the Bidder for examination prior to the opening date. Failure by the Bidder to examine such sample shall not entitle the Bidder to any relief from the conditions imposed by the Bid Specifications.~~

~~**b. Bidder Supplied Samples** The Commissioner reserves the right to request from the Bidder/Contractor a representative sample(s) of the Product offered at any time prior to or after award of a contract. Unless otherwise instructed, samples shall be furnished within the time specified in the request. Untimely submission of a sample may constitute grounds for rejection of Bid or cancellation of the Contract. Samples must be submitted free of charge and be accompanied by the Bidder's name and address, any descriptive literature relating to the Product and a~~

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~~statement indicating how and where the sample is to be returned. Where applicable, samples must be properly labeled with the appropriate Bid or Contract reference.~~

~~A sample may be held by the Commissioner during the entire term of the Contract and for a reasonable period thereafter for comparison with deliveries. At the conclusion of the holding period the sample, where feasible, will be returned as instructed by the Bidder, at the Bidder's expense and risk. Where the Bidder has failed to fully instruct the Commissioner as to the return of the sample (i.e., mode and place of return, etc.) or refuses to bear the cost of its return, the sample shall become the sole property of the receiving entity at the conclusion of the holding period.~~

~~**c. Enhanced Samples** When an approved sample exceeds the minimum specifications, all Product delivered must be of the same enhanced quality and identity as the sample. Thereafter, in the event of a Contractor's default, the Commissioner may procure a Product substantially equal to the enhanced sample from other sources, charging the Contractor for any additional costs incurred.~~

~~**d. Conformance with Sample(s)** Submission of a sample (whether or not such sample is tested by, or for, the Commissioner) and approval thereof shall not relieve the Contractor from full compliance with all terms and conditions, performance related and otherwise, specified in the Bid Specifications. If in the judgment of the Commissioner the sample or product submitted is not in accordance with the specifications or testing requirements prescribed in the Bid Specifications, the Commissioner may reject the Bid. If an award has been made, the Commissioner may cancel the Contract at the expense of the Contractor.~~

~~**e. Testing** All samples are subject to tests in the manner and place designated by the Commissioner, either prior to or after Contract award. Unless otherwise stated in the Bid Specifications, Bidder samples consumed or rendered useless by testing will not be returned to the Bidder. Testing costs for samples that fails to meet Contract requirements may be at the expense of the Contractor.~~

~~**f. Requests For Samples By Authorized Users** Requests for samples by Authorized Users require the consent of the~~

~~Contractor. Where Contractor refuses to furnish a sample, Authorized User may, in its sole discretion, make a determination on the performance capability of the Product or on the issue in question.~~

**Bid Evaluation**

~~**29. BID EVALUATION** The Commissioner reserves the right to accept or reject any and all Bids, or separable portions of offers, and waive technicalities, irregularities, and omissions if the Commissioner determines the best interests of the State will be served. The Commissioner, in his/her sole discretion, may accept or reject illegible, incomplete or vague Bids and his/her decision shall be final. A conditional or revocable Bid which clearly communicates the terms or limitations of acceptance may be considered, and Contract award may be made in compliance with the Bidder's conditional or revocable terms in the offer.~~

~~**30. CONDITIONAL BID** Unless the Bid Specifications provides otherwise, a Bid is not rendered non-responsive if the Bidder specifies that the award will be accepted only on all or a specified group of items or Product included in the specification. It is understood that nothing herein shall be deemed to change or alter the method of award contained in the Bid Documents.~~

~~**31. CLARIFICATIONS / REVISIONS** Prior to award, the Commissioner reserves the right to seek clarifications, request Bid revisions, or to request any information deemed necessary for proper evaluation of Bids from all Bidders deemed to be eligible for Contract award. Failure to provide requested information may result in rejection of the Bid.~~

~~**32. PROMPT PAYMENT DISCOUNTS** While prompt payment discounts will not be considered in determining the low Bid, the Commissioner may consider any prompt payment discount in resolving Bids which are otherwise tied. However, any notation indicating that the price is net, (e.g., net 30 days), shall be understood to mean only that no prompt payment discount is offered by the Bidder. The imposition of service, interest, or other charges, except pursuant to the provisions of Article 11-A of the State Finance Law, which are applicable in any case, may render the Bid non-responsive and may be cause for its rejection.~~

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~~**33. EQUIVALENT OR IDENTICAL BIDS** In the event two offers are found to be substantially equivalent, price shall be the basis for determining the award recipient. If two or more Bidders submit substantially equivalent Bids as to pricing or other factors, the decision of the Commissioner to award a Contract to one or more of such Bidders shall be final.~~

~~**34. PERFORMANCE AND RESPONSIBILITY QUALIFICATIONS** The Commissioner reserves the right to investigate or inspect at any time whether or not the Product, services, qualifications or facilities offered by the Bidder/Contractor meet the requirements set forth in the Bid~~

~~Specifications/Contract or as set forth during Contract negotiations. Contractor shall at all times during the Contract term remain responsible and responsive. A Bidder/Contractor must be prepared, if requested by the Commissioner, to present evidence of legal authority to do business in New York State, integrity, experience, ability, prior performance, organizational and financial capacity as well as where applicable, a statement as to supply, plant, machinery and capacity of the manufacturer or source for the production, distribution and servicing of the Product offered/Bid. If the Commissioner determines that the conditions and terms of the Bid Documents, Bid Specifications or Contract are not complied with, or that items, services or Product proposed to be furnished do not meet the specified requirements, or that the legal authority, integrity, experience, ability, prior performance, organization and financial capacity or facilities are not satisfactory, the Commissioner may reject such Bid or terminate the Contract.~~

~~**35. DISQUALIFICATION FOR PAST PERFORMANCE AND FINDINGS OF NON-RESPONSIBILITY** Bidder may be disqualified from receiving awards if Bidder, or anyone in Bidder's employment, has previously failed to perform satisfactorily in connection with public Bidding or contracts or is deemed non-responsible.~~

~~**36. QUANTITY CHANGES PRIOR TO AWARD** The Commissioner reserves the right, at any time prior to the award of a specific quantity Contract, to alter in good faith the quantities listed in the Bid Specifications. In the event such right is exercised, the lowest responsible Bidder meeting Bid Specifications will be advised of the revised quantities and afforded an opportunity to extend or reduce its Bid price in relation to the changed quantities. Refusal by the low Bidder to so extend or reduce its Bid price may result in the rejection of its~~

~~Bid and the award of such Contract to the lowest responsible Bidder who accepts the revised qualifications.~~

~~**37. TIMEFRAME FOR OFFERS** The Commissioner reserves the right to make awards within sixty (60) days after the date of the Bid opening or such other period of time as set forth in the Bid Documents, during which period, Bids must remain firm and cannot be withdrawn. Pursuant to Section 163(9)(e) of the State Finance Law and Section 2-205 of the Uniform Commercial Code when applicable, where an award is not made within the sixty (60) day period or other time specified as set forth in the Bid Documents, the Bids shall remain firm until such later time as either a Contract is awarded or the Bidder delivers to the Commissioner written notice of the withdrawal of its Bid. Any Bid which expressly states therein that acceptance must be made within a shorter specified time, may at the sole discretion of the Commissioner, be accepted or rejected.~~

**TERMS & CONDITIONS**

**38. CONTRACT CREATION / EXECUTION** Except for contracts governed by Article 11-B of the State Finance Law, subject to and upon receipt of all required approvals as set forth in the Bid Specifications a Contract shall be deemed executed and created with the successful Bidder(s), upon the Commissioner's mailing or electronic communication to the address on the Bid/Contract of: (i) the final Contract Award Notice; (ii) a fully executed Contract; or (iii) a Purchase Order authorized by the Commissioner.

**39. PARTICIPATION IN CENTRALIZED CONTRACTS** The following shall not limit or inhibit the OGS Commissioner's authority under State Finance Law, Section 163 (10) (e) (Piggybacking):

**a. Agencies** All State Agencies may utilize and purchase under any state Centralized Contract let by the Commissioner, unless the Bid Documents limit purchases to specific State Agencies.

**b. Non-State Agency Authorized Users** Authorized Users other than State Agencies are permitted to make purchases

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through state Centralized Contracts where permitted by law, the Contract or the Commissioner.

**c. Voluntary Extension** Purchase Orders issued against a State Centralized Contract by any Authorized User not provided for in the Bid Specifications shall be honored by the Contractor at its discretion and only with the approval of the OGS Commissioner and any other approvals required by law. Contractors are encouraged to voluntarily extend service Contracts to those additional entities authorized to utilize commodity Contracts under Section 163 (3) (iv) of the State Finance Law.

**d. Responsibility for Performance** Participation in state Centralized Contracts by Authorized Users is permitted upon the following conditions: (i) the responsibility with regard to performance of any contractual obligation, covenant, condition or term thereunder by any Authorized User other than State Agencies shall be borne and is expressly assumed by such Authorized User and not by the State; (ii) a breach of the

Contract by any particular Authorized User shall neither constitute nor be deemed a breach of the Contract as a whole which shall remain in full force and effect, and shall not affect the validity of the Contract nor the obligations of the Contractor thereunder respecting non-breaching Authorized Users, whether State or otherwise; (iii) for a breach by an Authorized User other than a State Agency, the State specifically and expressly disclaims any and all liability for such breach; and (iv) each non-state agency Authorized User and Contractor guarantees to save the State, its officers, agents and employees harmless from any liability that may be or is imposed by their failure to perform in accordance with its obligations under the Contract.

**e. Contract Migration** Authorized Users holding individual Contracts with a Contractor at the time that Contractor is awarded a Centralized Contract for the same Products or services shall be permitted to migrate to that Centralized Contract effective with its commencement date. Such migration shall not operate to diminish, alter or eliminate any right that the Authorized User otherwise had under the terms and conditions of their individual Contract.

**40. MODIFICATION OF CONTRACT TERMS** The terms and conditions set forth in the Contract shall govern all transactions by Authorized User(s) under this Contract. The Contract may

only be modified or amended upon mutual written agreement of the Commissioner and Contractor.

The Contractor may, however, offer Authorized User(s) more advantageous pricing, payment, or other terms and conditions than those set forth in the Contract. In such event, a copy of such terms shall be furnished to the Authorized User(s) and Commissioner by the Contractor at the time of such offer.

Other than where such terms are more advantageous for the Authorized User(s) than those set forth in the Contract, no alteration or modification of the terms of the Contract, including substitution of Product, shall be valid or binding against Authorized User(s) unless authorized by the Commissioner or specified in the Contract Award Notification. No such alteration or modification shall be made by unilaterally affixing such terms to Product upon delivery (including, but not limited to, attachment or inclusion of standard pre-printed order forms, product literature, "shrink wrap" terms accompanying software upon delivery, or other documents) or by incorporating such terms onto order forms, purchase orders or other documents forwarded by the Contractor for payment, notwithstanding Authorized User's subsequent acceptance of Product, or that Authorized User has subsequently processed such document for approval or payment.

**41. SCOPE CHANGES** The Commissioner reserves the right, unilaterally, to require, by written order, changes by altering, adding to or deducting from the Bid Specifications, such changes to be within the general scope of the Contract. The Commissioner may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the consent of the Contractor, which consent shall not be unreasonably withheld.

**42. ESTIMATED / SPECIFIC QUANTITY CONTRACTS** Estimated quantity contracts are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the Contract term. No guarantee of any quantity(s) is implied or given. Purchases by Authorized Users from Contracts for services and technology are voluntary.

With respect to any specific quantity stated in the contract, the Commissioner reserves the right after award to order up to 20%



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more or less (rounded to the next highest whole number) than the specific quantities called for in the Contract. Notwithstanding the foregoing, the Commissioner may purchase greater or lesser percentages of Contract quantities should the Commissioner and Contractor so agree. Such agreement may include an equitable price adjustment.

**43. EMERGENCY CONTRACTS** In the event that a disaster emergency is declared by Executive Order under Section 28 of Article 2-B of the Executive Law, or the Commissioner determines pursuant to his/her authority under Section 163 (10) (b) of the State Finance Law that an emergency exists requiring the prompt and immediate delivery of Product, the Commissioner reserves the right to obtain such Product from any source, including but not limited to this Contract(s), as the Commissioner in his/her sole discretion determines will meet the needs of such emergency. Contractor shall not be entitled to any claim or lost profits for Product procured from other sources pursuant to this paragraph. The reasons underlying the finding that an emergency exists shall be included in the procurement record.

**44. PURCHASE ORDERS** Unless otherwise authorized in writing by the Commissioner, no Product is to be delivered or furnished by Contractor until transmittal of an official Purchase Order from the Authorized User. Unless terminated or cancelled pursuant to the authority vested in the Commissioner, Purchase Orders shall be effective and binding upon the Contractor when placed in the mail or electronically transmitted prior to the termination of the contract period, addressed to the Contractor at the address for receipt of orders set forth in the Contract or in the Contract Award Notification.

All Purchase Orders issued pursuant to Contracts let by the Commissioner must bear the appropriate Contract number and, if necessary, required State approvals. As deemed necessary, the Authorized User may confirm pricing and other Product information with the Contractor prior to placement of the Purchase Order. The State reserves the right to require any other information from the Contractor which the State deems necessary in order to complete any Purchase Order placed under the Contract. Unless otherwise specified, all Purchase Orders against Centralized Contracts will be placed by Authorized Users directly with the Contractor and any discrepancy between the terms stated on the vendor's order form, confirmation or acknowledgment, and the Contract terms shall be resolved in favor of the terms most favorable to the Authorized User. Should an Authorized User add written terms

and conditions to the Purchase Order that conflict with the terms and conditions of the Contract, the Contractor has the option of rejecting the Purchase Order within five business days of its receipt but shall first attempt to negotiate the additional written terms and conditions in good faith with the Authorized User, or fulfill the Purchase Order. Notwithstanding the above, the Authorized User reserves the right to dispute any discrepancies arising from the presentation of additional terms and conditions with the Contractor.

If, with respect to an Agency Specific Contract let by the OGS Commissioner, a Purchase Order is not received by the Contractor within two weeks after the issuance of a Contract Award Notification, it is the responsibility of the Contractor to request in writing that the appropriate Authorized User forward a Purchase Order. If, thereafter, a Purchase Order is not received within a reasonable period of time, the Contractor shall promptly notify in writing the appropriate purchasing officer in OGS. Failure to timely notify such officer may, in the discretion of the OGS Commissioner and without cost to the State, result in the cancellation of such requirement by the OGS Commissioner with a corresponding reduction in the Contract quantity and price.

~~**45. PRODUCT DELIVERY** Delivery must be made as ordered to the address specified on the Purchase Order and in accordance with the terms of the Contract or Contract Award Notice. Unless otherwise specified in the Bid Documents, delivery shall be made within thirty calendar days after receipt of a Purchase Order by the Contractor. The decision of the Commissioner as to compliance with delivery terms shall be final. The burden of proof for delay in receipt of Purchase Order shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately notify the Commissioner and the Authorized User, and confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. Any extension of time for delivery must be requested in writing by the Contractor and approved in writing by the Authorized User. Failure to meet such delivery time schedule may be grounds for cancellation of the order or, in the Commissioner's discretion, the Contract.~~

~~**46. WEEKEND AND HOLIDAY DELIVERIES** Unless otherwise specified in the Bid Specifications or by an Authorized User, deliveries will be scheduled for ordinary business hours, Monday through Friday (excluding legal holidays observed by the State of New York). Deliveries may be scheduled by mutual agreement for Saturdays, Sundays or legal holidays observed~~

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by the State of New York where the Product is for daily consumption, an emergency exists, the delivery is a replacement, delivery is late, or other reasonable circumstance in which event the convenience of the Authorized User shall govern.

**47. SHIPPING/RECEIPT OF PRODUCT**

**a. Packaging** Tangible Product shall be securely and properly packed for shipment, storage and stocking in appropriate, clearly labeled shipping containers and according to accepted commercial practice, without any extra charges for packing materials, cases or other types of containers. The container shall become and remain the property of the Authorized User unless otherwise specified in the Contract documents.

**b. Shipping Charges** Unless otherwise stated in the Bid Specifications, all deliveries shall be deemed to be freight on board (F.O.B.) destination tailgate delivery at the dock of the Authorized User. Unless otherwise agreed, items purchased at a price F.O.B. Shipping point plus transportation charges shall not relieve the Contractor from responsibility for safe and proper delivery notwithstanding the Authorized User's payment of transportation charges. Contractor shall be responsible for ensuring that the Bill of Lading states "charges prepaid" for all shipments.

**c. Receipt of Product** The Contractor shall be solely responsible for assuring that deliveries are made to personnel authorized to accept delivery on behalf of the Authorized User. Any losses resulting from the Contractor's failure to deliver Product to authorized personnel shall be borne exclusively by the Contractor.

**48. TITLE AND RISK OF LOSS** Notwithstanding the form of shipment, title or other property interest, risk of loss shall not pass from the Contractor to the Authorized User until the Products have been received, inspected and accepted by the receiving entity. Acceptance shall occur within a reasonable time or in accordance with such other defined acceptance period as may be specified in the Bid Specifications or Purchase Order. Mere acknowledgment by Authorized User personnel of the delivery or receipt of goods (e.g., signed bill of lading) shall not be deemed or construed as acceptance of the Products received. Any delivery of Product that is substandard or does not comply with the Bid Specifications or Contract terms and

conditions, may be rejected or accepted on an adjusted price basis, as determined by the Commissioner.

**49. RE-WEIGHING PRODUCT** Deliveries are subject to re-weighing at the point of destination by the Authorized User. If shrinkage occurs which exceeds that normally allowable in the trade, the Authorized User shall have the option to require delivery of the difference in quantity or to reduce the payment accordingly. Such option shall be exercised in writing by the Authorized User.

**50. PRODUCT SUBSTITUTION** In the event a specified manufacturer's Product listed in the Contract becomes unavailable or cannot be supplied by the Contractor for any reason (except as provided for in the Savings/Force Majeure Clause) a Product deemed in writing by the Commissioner to be equal to or better than the specified Product must be substituted by the Contractor at no additional cost or expense to the Authorized User. Unless otherwise specified, any substitution of Product prior to the Commissioner's written approval may be cause for cancellation of Contract.

**51. REJECTED PRODUCT** When Product is rejected, it must be removed by the Contractor from the premises of the Authorized User within ten calendar days of notification of rejection by the Authorized User. Upon notification of rejection, risk of loss of rejected or non-conforming Product shall remain with Contractor. Rejected items not removed by the Contractor within ten calendar days of notification shall be regarded as abandoned by the Contractor, and the Authorized User shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the Authorized User for any and all costs and expenses incurred in storage or effecting removal or disposition after the ten-calendar day period.

**52. INSTALLATION** Where installation is required, Contractor shall be responsible for placing and installing the Product in the required locations. All materials used in the installation shall be of good quality and shall be free from any and all defects that would mar the appearance of the Product or render it structurally unsound. Installation includes the furnishing of any equipment, rigging and materials required to install or place the Product in the proper location. The Contractor shall protect the site from damage for all its work and shall repair damages or injury of any kind caused by the Contractor, its employees, officers or agents. If any alteration, dismantling or excavation, etc. is required to effect installation, the Contractor shall

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~~thereafter promptly restore the structure or site. Work shall be performed to cause the least inconvenience to the Authorized User(s) and with proper consideration for the rights of other Contractors or workers. The Contractor shall promptly perform its work and shall coordinate its activities with those of other Contractors. The Contractor shall clean up and remove all debris and rubbish from its work as required or directed. Upon completion of the work, the building and surrounding area of work shall be left clean and in a neat, unobstructed condition, and everything in satisfactory repair and order.~~

~~**53. REPAIRED OR REPLACED PARTS / COMPONENTS**~~

~~Where the Contractor is required to repair, replace or substitute Product or parts or components of the Product under the Contract, the repaired, replaced or substituted Products shall be subject to all terms and conditions for new parts and components set forth in the Contract including Warranties, as set forth in the Additional Warranties Clause herein. Replaced or repaired Product or parts and components of such Product shall be new and shall, if available, be replaced by the original manufacturer's component or part. Remanufactured parts or components meeting new Product standards may be permitted by the Commissioner or Authorized User. Before installation, all proposed substitutes for the original manufacturer's installed parts or components must be approved by the Authorized User. The part or component shall be equal to or of better quality than the original part or component being replaced.~~

~~**54. ON-SITE STORAGE** With the written approval of the Authorized User, materials, equipment or supplies may be stored at the Authorized User's site at the Contractor's sole risk.~~

**55. EMPLOYEES, SUBCONTRACTORS & AGENTS** All employees, Subcontractors or agents performing work under the Contract must be trained staff or technicians who meet or exceed the professional, technical and training qualifications set forth in the Bid Specifications or the Bid Documents, whichever is more restrictive, and must comply with all security and administrative requirements of the Authorized User. The Commissioner reserves the right to conduct a security background check or otherwise approve any employee, Subcontractor or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause based on, including but not limited to, professional, technical or training qualifications, quality of work or change in security status or non-compliance with Authorized User's security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms. The Commissioner reserves

the right to reject and/or bar from the facility for cause any employee, Subcontractor, or agents of the Contractor.

**56. ASSIGNMENT** The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the contract or its right, title or interest therein, or its power to execute such contract to any other person, company, firm or corporation in performance of the contract without the prior written consent of the Commissioner or Authorized User (as applicable). Failure to obtain consent to assignment from the Authorized User shall revoke and annul such Contract. Notwithstanding the foregoing, the State shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignment(s) with the Comptroller. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request to assignment to the Commissioner and seek written agreement from the Commissioner which will be filed with the Comptroller. The Commissioner reserves the right to reject any proposed assignee in his/her discretion.

Upon notice to the Contractor, the Contract may be assigned without the consent of the Contractor to another State Agency or subdivision of the State pursuant to a governmental reorganization or assignment of functions under which the functions are transferred to a successor Agency or to another Agency that assumes OGS responsibilities for the Contract.

**57. SUBCONTRACTORS AND SUPPLIERS** The Commissioner reserves the right to reject any proposed Subcontractor or supplier for bona fide business reasons, which may include, but are not limited to: they are on the Department of Labor's list of companies with which New York State cannot do business; the Commissioner determines that the company is not qualified; the Commissioner determines that the company is not responsible; the company has previously provided unsatisfactory work or services; the company failed to solicit minority and women's business enterprises (M/WBE) Bidders as required by prior Contracts.

**58. PERFORMANCE / BID BOND** The Commissioner reserves the right to require a Bidder or Contractor to furnish without additional cost, a performance, payment or Bid bond or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract. Where required, such

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bond or other security shall be in the form prescribed by the Commissioner.

**59. SUSPENSION OF WORK** The Commissioner, in his/her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, in the best interests of the Authorized User. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze or reduction on State spending, declaration of emergency, contract compliance issues or other such circumstances. Upon issuance of such notice, the Contractor is not to accept any Purchase Orders, and shall comply with the suspension order. Activity may resume at such time as the Commissioner issues a formal written notice authorizing a resumption of performance under the Contract.

An Authorized User may issue a formal written notice for the suspension of work for which it has engaged the Contractor for reasons specified in the above paragraph. The written notice shall set forth the reason for such suspension and a copy of the written notice shall be provided to the Commissioner.

**60. TERMINATION**

~~**a. For Cause:** For a material breach that remains uncured for more than thirty (30) days or other specified period after written notice to the Contractor, the Contract or Purchase Order may be terminated by the Commissioner or Authorized User at the Contractor's expense where Contractor becomes unable or incapable of performing, or meeting any requirements or qualifications set forth in the Contract, or for non-performance, or upon a determination that Contractor is non-responsible. Such termination shall be upon written notice to the Contractor. In such event, the Commissioner or Authorized User may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.~~

~~**b. For Convenience:** By written notice, this Contract may be terminated at any time by the State for convenience upon sixty (60) days written notice or other specified period without penalty or other early termination charges due. Such termination of the Contract shall not affect any project or Purchase Order that has been issued under the Contract prior to the date of such termination. If the Contract is terminated pursuant to this subdivision, the Authorized User shall remain liable for all~~

~~accrued but unpaid charges incurred through the date of the termination. Contractor shall use due diligence and provide any outstanding deliverables.~~

~~**c. For Violation of the Sections 139-j and 139-k of the State Finance Law:** The Commissioner reserves the right to terminate the Contract in the event it is found that the certification filed by the Bidder in accordance with Section 139-k of the State Finance Law was intentionally false or intentionally incomplete. Upon such finding, the Commissioner may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.~~

**d. For Violation of Revised Tax Law 5a:** The Commissioner reserves the right to terminate the contract in the event it is found that the certification filed by the Contractor in accordance with §5-a of the Tax Law is not timely filed during the term of the Contract or the certification furnished was intentionally false or intentionally incomplete. Upon such finding, the Commissioner may exercise its termination right by providing written notification to the Contractor.

**61. SAVINGS/FORCE MAJEURE** A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled. Force majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or the Commissioner in the performance of the Contract which non-performance, by exercise of reasonable diligence, cannot be prevented. Contractor shall provide the Commissioner with written notice of any force majeure occurrence as soon as the delay is known.

Neither the Contractor nor the Commissioner shall be liable to the other for any delay in or failure of performance under the Contract due to a force majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contractor and the Commissioner to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.

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Notwithstanding the above, at the discretion of the Commissioner where the delay or failure will significantly impair the value of the Contract to the State or to Authorized Users, the Commissioner may:

- a. Accept allocated performance or deliveries from the Contractor. The Contractor, however, hereby agrees to grant preferential treatment to Authorized Users with respect to Product subjected to allocation; and/or
- b. Purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the State; or
- c. Terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.

In addition, the Commissioner reserves the right, in his/her sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (i) the volatility is due to causes outside the control of Contractor; (ii) the volatility affects the marketplace or industry, not just the particular Contract source of supply; (iii) the effect on pricing or availability of supply is substantial; and (iv) the volatility so affects Contractor's performance that continued performance of the Contract would result in a substantial loss.

**62. CONTRACT BILLINGS** Contractor and the distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billings for Authorized Users must contain all information required by the Contract and the State Comptroller. The State Comptroller shall render payment for Authorized User purchases, and such payment shall be made in accordance with ordinary State procedures and practices. Payment of Contract purchases made by Authorized Users, other than Agencies, shall be billed directly by Contractor on invoices/vouchers, together with

complete and accurate supporting documentation as required by the Authorized User.

Submission of an invoice and payment thereof shall not preclude the Commissioner from reimbursement or demanding a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of the Contract or where the billing was inaccurate.

Contractor shall provide, upon request of the Commissioner, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in the format requested by the Commissioner and in a media commercially available from the Contractor. The Commissioner may direct the Contractor to provide the information to the State Comptroller or to any Authorized User of the Contract.

**63. DEFAULT – AUTHORIZED USER**

a. Breach of Authorized User Not Breach of Centralized Contract. An Authorized User's breach shall not be deemed a breach of the Centralized Contract, rather it shall be deemed a breach of the Authorized User's performance under the terms and conditions of the Centralized Contract.

b. Failure to Make Payment. In the event a participating Authorized User fails to make payment to the Contractor for Products delivered, accepted and properly invoiced, within 60 days of such delivery and acceptance, the Contractor may, upon 10 days advance written notice to both the Commissioner and the Authorized User's purchasing official, suspend additional shipments of Product or provision of services to such entity until such time as reasonable arrangements have been made and assurances given by such entity for current and future Contract payments.

c. Notice of Breach. Notwithstanding the foregoing, the Contractor shall, at least 10 days prior to declaring a breach of Contract by any Authorized User, by certified or registered mail, notify both the Commissioner and the purchasing official of the breaching Authorized User of the specific facts, circumstances and grounds upon which a breach will be declared.



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d. It is understood, however, that if the Contractor's basis for declaring a breach is insufficient, the Contractor's declaration of breach and failure to service an Authorized User shall constitute a breach of its Contract and the Authorized User may thereafter seek any remedy available at law or equity.

**64. INTEREST ON LATE PAYMENTS**

a. **State Agencies** The payment of interest on certain payments due and owed by Agency may be made in accordance with Article 11-A of the State Finance Law (SFL §179-d et. Seq.) and Title 2 of the New York Code of Rules and Regulations, Part 18 (Implementation of Prompt Payment Legislation -2 NYCRR §18.1 et seq.).

b. **By Non-State Agencies** The terms of Article 11-A apply only to procurements by and the consequent payment obligations of Agencies. Neither expressly nor by any implication is the statute applicable to Non-State Authorized Users. Neither OGS nor the State Comptroller is responsible for payments on any purchases made by a Non-State Agency Authorized User.

c. **By Contractor** Should the Contractor be liable for any payments to the State hereunder, interest, late payment charges and collection fee charges will be determined and assessed pursuant to Section 18 of the State Finance Law.

**65. REMEDIES FOR BREACH** It is understood and agreed that all rights and remedies afforded below shall be in addition to all remedies or actions otherwise authorized or permitted by law:

a. **Cover/Substitute Performance** In the event of Contractor's material breach, the Commissioner may, with or without formally Bidding: (i) Purchase from other sources; or (ii) If the Commissioner is unsuccessful after making reasonable attempts, under the circumstances then existing, to timely obtain acceptable service or acquire replacement Product of equal or comparable quality, the Commissioner may acquire acceptable replacement Product of lesser or greater quality.

~~Such purchases may, in the discretion of the Commissioner, be deducted from the Contract quantity and payments due Contractor.~~

~~b. **Withhold Payment** In any case where a question of non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the Commissioner. Should the amount withheld be finally paid, a cash discount originally offered may be taken as if no delay in payment had occurred.~~

~~c. **Bankruptcy** In the event that the Contractor files a petition under the U.S. Bankruptcy Code during the term of this Centralized Contract, Authorized Users may, at their discretion, make application to exercise its right to set off against monies due the Debtor or, under the Doctrine of Recoupment, credit the Authorized User the amounts owed by the Contractor arising out of the same transactions.~~

~~d. **Reimbursement of Costs Incurred** The Contractor agrees to reimburse the Authorized User promptly for any and all additional costs and expenses incurred for acquiring acceptable services, and/or replacement Product. Should the cost of cover be less than the Contract price, the Contractor shall have no claim to the difference. The Contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the Contractor, all costs and expenses expended or incurred by the Authorized User in connection therewith, including reasonable attorney's fees, shall be paid by the Contractor.~~

~~Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the ordering Authorized User may rent substitute equipment temporarily. Any sums expended for such rental shall, upon demand, be reimbursed to the Authorized User promptly by the Contractor or deducted by the Authorized User from payments due or to become due the Contractor on the same or another transaction.~~

~~e. **Deduction/Credit** Sums due as a result of these remedies may be deducted or offset by the Authorized User from payments due, or to become due, the Contractor on the same or another transaction. If no deduction or only a partial deduction is made in such fashion the Contractor shall pay to the Authorized User the amount of such claim or portion of the claim still outstanding, on demand. The Commissioner reserves the~~

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~~right to determine the disposition of any rebates, settlements, restitution, liquidated damages, etc., which arise from the administration of the Contract.~~

**66. ASSIGNMENT OF CLAIM** Contractor hereby assigns to the State any and all its claims for overcharges associated with this Contract which may arise under the antitrust laws of the United States, 15 USC Section 1, et. seq. and the antitrust laws of the State of New York, General Business Law Section 340, et. seq.

**67. TOXIC SUBSTANCES** Each Contractor furnishing a toxic substance as defined by Section 875 of the Labor Law, shall provide such Authorized User with not less than two copies of a material safety data sheet, which sheet shall include for each such substance the information outlined in Section 876 of the Labor Law.

Before any chemical product is used or applied on or in any building, a copy of the product label and Material Safety Data Sheet must be provided to and approved by the Authorized User agency representative.

**68. INDEPENDENT CONTRACTOR** It is understood and agreed that the legal status of the Contractor, its agents, officers and employees under this Contract is that of an independent Contractor, and in no manner shall they be deemed employees of the Authorized User, and therefore are not entitled to any of the benefits associated with such employment. The Contractor agrees, during the term of this Contract, to maintain at Contractor's expense those benefits to which its employees would otherwise be entitled by law, including health benefits, and all necessary insurance for its employees, including worker's compensation, disability and unemployment insurance, and to provide the Authorized User with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, state and local taxes, and all FICA contributions.

**69. SECURITY** Contractor warrants, covenants and represents that it will comply fully with all security procedures of the Authorized User(s) in performance of the Contract including but not limited to physical, facility, documentary and cyber security rules, procedures and protocols.

**70. COOPERATION WITH THIRD PARTIES** The Contractor shall be responsible for fully cooperating with any third party, including but not limited to other Contractors or Subcontractors of the Authorized User, as necessary to ensure delivery of Product or coordination of performance of services.

~~**71. CONTRACT TERM RENEWAL** In addition to any stated renewal periods in the Contract, any Contract or unit portion thereof let by the Commissioner may be extended by the Commissioner for an additional period(s) of up to one year with the written concurrence of the Contractor and Comptroller. Such extension may be exercised on a month to month basis or in other stated periods of time during the one year extension.~~

**72. ADDITIONAL WARRANTIES** Where Contractor, product manufacturer or service provider generally offers additional or more advantageous warranties than set forth below, Contractor shall offer or pass through any such warranties to Authorized Users. Contractor hereby warrants and represents:

**a. Product Performance** Contractor warrants and represents that Products delivered pursuant to this Contract conform to the manufacturer's specifications, performance standards and documentation, and the documentation fully describes the proper procedure for using the Products.

**b. Title and Ownership Warranty** Contractor warrants, represents and conveys (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver perpetual license rights to any Products transferred to Authorized User under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor fully indemnifies the Authorized User for any loss, damages or actions arising from a breach of said warranty without limitation.

**c. Contractor Compliance** Contractor represents and warrants to pay, at its sole expense, for all applicable permits, licenses, tariffs, tolls and fees to give all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Commissioner that it meets or exceeds all requirements of the Bid/Contract and any applicable laws, including but not limited to, permits, insurance coverage,

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licensing, proof of coverage for worker's compensation, and shall provide such proof as required by the Commissioner. Failure to do so may constitute grounds for the Commissioner to cancel or suspend this Contract, in whole or in part, or to take any other action deemed necessary by the Commissioner.

**d. Product Warranty** Unless recycled or recovered materials are available in accordance with the "Recycled or Recovered Materials" clause, Product offered shall be standard new equipment, current model or most recent release of regular stock product with all parts regularly used with the type of equipment offered; and no attachment or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice.

Contractor further warrants and represents that components or deliverables specified and furnished by or through Contractor shall individually, and where specified and furnished as a system, be substantially uninterrupted or error-free in operation and guaranteed against faulty material and workmanship for the warranty period, or for a minimum of one (1) year from the date of acceptance, whichever is longer ("Project warranty period"). During the Project warranty period, defects in the materials or workmanship of components or deliverables specified and furnished by or through Contractor shall be repaired or replaced by Contractor at no cost or expense to the Authorized User. Contractor shall extend the Project warranty period for individual component(s), or for the System as a whole, as applicable, by the cumulative period(s) of time, after notification, during which an individual component or the System requires servicing or replacement (down time) or is in the possession of the Contractor, its agents, officers, Subcontractors, distributors, resellers or employees ("extended warranty").

Where Contractor, the Independent Software Vendor "ISV," or other third party manufacturer markets any Project Deliverable delivered by or through Contractor with a standard commercial warranty, such standard warranty shall be in addition to, and not relieve the Contractor from, Contractor's warranty obligations during the project warranty and extended warranty period(s). Where such standard commercial warranty covers all or some of the Project warranty or extended warranty period(s), Contractor shall be responsible for the coordination during the Project warranty or extended warranty period(s) with ISV or other third party manufacturer(s) for warranty repair or replacement of ISV or other third party manufacturer's Product.

Where Contractor, ISV or other third party manufacturer markets any Project Deliverable with a standard commercial warranty which goes beyond the Project warranty or extended warranty period(s), Contractor shall notify the Authorized User and pass through the manufacturer's standard commercial warranty to Authorized User at no additional charge; provided, however, that Contractor shall not be responsible for coordinating services under the third party extended warranty after expiration of the Project warranty and extended warranty period(s).

**e. Replacement Parts Warranty** If during the regular or extended warranty period's faults develop, the Contractor shall promptly repair or, upon demand, replace the defective unit or component part affected. All costs for labor and material and transportation incurred to repair or replace defective Product during the warranty period shall be borne solely by the Contractor, and the State or Authorized User shall in no event be liable or responsible therefor.

Any part of component replaced by the Contractor under the Contract warranty shall be replaced at no cost to the Authorized User and guaranteed for the greater of: a) the warranty period under paragraph (d) above; or b) if a separate warranty for that part or component is generally offered by the manufacturer, the standard commercial warranty period offered by the manufacturer for the individual part or component.

**f. Virus Warranty** The Contractor represents and warrants that Licensed Software contains no known viruses. Contractor is not responsible for viruses introduced at Licensee's site.

**g. Date/Time Warranty** Contractor warrants that Product(s) furnished pursuant to this Contract shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

Where Contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g., billing, invoicing, claim



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processing), Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

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

**h. Workmanship Warranty** Contract warrants that all components or deliverables specified and furnished by or through Contractor under the Project Definition/Work Order meet the completion criteria set forth in the Project Definition/Work Order and any subsequent statement(s) of work, and that services will be provided in a workmanlike manner in accordance with industry standards.

**i. Survival of Warranties** All warranties contained in this Contract shall survive the termination of this Contract.

**73. LEGAL COMPLIANCE** Contractor represents and warrants that it shall secure all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Commissioner that it meets or exceeds all requirements of the Bid and Contract and any applicable laws, including but not limited to, permits, licensing, and shall provide such proof as required by the Commissioner. Failure to comply or failure to provide proof may constitute grounds for the Commissioner to cancel or suspend the Contract, in whole or in part, or to take any other action deemed necessary by the Commissioner. Contractor also agrees to disclose information and provide affirmations and certifications to comply with Sections 139-j and 139-k of the State Finance Law.

**74. INDEMNIFICATION** ~~Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully indemnify and save harmless the Authorized Users from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the Authorized Users.~~

**75. INDEMNIFICATION RELATING TO THIRD PARTY RIGHTS** The Contractor will also indemnify and hold the Authorized Users harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs that may be finally assessed against the Authorized Users in any action for infringement of a United States Letter Patent, or of any copyright, trademark, trade secret or other third party proprietary right except to the extent such claims arise from the Authorized Users gross negligence or willful misconduct, provided that the State shall give Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor.

If usage shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion to take action in the following order of precedence: (i) to procure for the Authorized User the right to continue Usage (ii) to modify the service or Product so that Usage becomes non-infringing, and is of at least equal quality and performance; or (iii) to replace said service or Product or part(s) thereof, as applicable, with non-infringing service or Product of at least equal quality and performance. If the above remedies are not available, the parties shall terminate the Contract, in whole or in part as necessary and applicable, provided the Authorized User is given a refund for any amounts paid for the period during which Usage was not feasible.

The foregoing provisions as to protection from third party rights shall not apply to any infringement occasioned by modification by the Authorized User of any Product without Contractor's approval.

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In the event that an action at law or in equity is commenced against the Authorized User arising out of a claim that the Authorized User's use of the service or Product under the Contract infringes any patent, copyright or proprietary right, and Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Authorized User and the Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract. Contractor shall in such event protect the interests of the Authorized User and secure a continuance to permit the Authorized User to appear and defend its interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the Authorized User may have. This constitutes the Authorized User's sole and exclusive remedy for patent infringement, or for infringement of any other third party proprietary right.

**76. LIMITATION OF LIABILITY** Except as otherwise set forth in the Indemnification Paragraphs above, the limit of liability shall be as follows:

**a.** Contractor's liability for any claim, loss or liability arising out of, or connected with the Products and services provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the charges specified in the Purchase Order for the Products and services, or parts thereof forming the basis of the Authorized User's claim, (said amount not to exceed a total of twelve (12) months charges payable under the applicable Purchase Order) or (ii) one million dollars (\$1,000,000), whichever is greater.

**b.** The Authorized User may retain such monies from any amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted against the Authorized User unless Contractor at the time of the presentation of claim shall demonstrate to the Authorized User's satisfaction that sufficient monies are set aside by the Contractor in the form of a bond or through insurance coverage to cover associated damages and other costs.

**c.** Notwithstanding the above, neither the Contractor nor the Authorized User shall be liable for any consequential, indirect or special damages of any kind which may result directly or

indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the Authorized User, the Contractor, or by others.

**77. INSURANCE** Contractor shall secure and maintain insurance coverage as specified in the Bid Documents and shall promptly provide documentation of specified coverages to the Authorized User. If specified, the Contractor may be required to add the Authorized User as an additional insured.

**THE FOLLOWING CLAUSES PERTAIN TO**  
**TECHNOLOGY & NEGOTIATED CONTRACTS**

~~**78. SOFTWARE LICENSE GRANT** Where Product is acquired on a licensed basis the following shall constitute the license grant:~~

~~**a. License Scope** Licensee is granted a non-exclusive, perpetual license to use, execute, reproduce, display, perform, or merge the Product within its business enterprise in the United States up to the maximum licensed capacity stated on the Purchase Order. Product may be accessed, used, executed, reproduced, displayed or performed up to the capacity measured by the applicable licensing unit stated on the Purchase Order (i.e., payroll size, number of employees, CPU, MIPS, MSU, concurrent user, workstation). Licensee shall have the right to use and distribute modifications or customizations of the Product to and for use by any Authorized Users otherwise licensed to use the Product, provided that any modifications, however extensive, shall not diminish Licensor's proprietary title or interest. No license, right or interest in any trademark, trade name, or service mark is granted hereunder.~~

~~**b. License Term** The license term shall commence upon the License Effective Date, provided, however, that where an acceptance or trial period applies to the Product, the License Term shall be extended by the time period for testing, acceptance or trial.~~

~~**c. Licensed Documentation** If commercially available, Licensee shall have the option to require the Contractor to deliver, at Contractor's expense: (i) one (1) hard copy and one (1) master electronic copy of the Documentation in a mutually~~

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agreeable format; (ii) based on hard copy instructions for access by downloading from the Internet (iii) hard copies of the Product Documentation by type of license in the following amounts, unless otherwise mutually agreed:

- Individual/Named User License — one (1) copy per License
- Concurrent Users — 10 copies per site
- Processing Capacity — 10 copies per site

Software media must be in a format specified by the Authorized User, without requiring any type of conversion.

Contractor hereby grants to Licensee a perpetual license right to make, reproduce (including downloading electronic copies of the Product) and distribute, either electronically or otherwise, copies of Product Documentation as necessary to enjoy full use of the Product in accordance with the terms of license.

~~**d. Product Technical Support & Maintenance**~~ Licensee shall have the option of electing the Product technical support and maintenance ("maintenance") set forth in the Contract by giving written notice to Contractor any time during the Centralized Contract term. Maintenance term(s) and any renewal(s) thereof are independent of the expiration of the Centralized Contract term and will not automatically renew.

Maintenance shall include, at a minimum, (i) the provision of error corrections, updates, revisions, fixes, upgrade and new releases to Licensee, and (ii) Help Desk assistance with locally accessible "800" or toll free, local telephone service, or alternatively on line Help Desk accessibility. Contractor shall maintain the Products so as to provide Licensee with the ability to utilize the Products in accordance with the Product documentation without significant functional downtime to its ongoing business operations during the maintenance term.

Authorized User shall not be required to purchase maintenance for use of Product, and may discontinue maintenance at the end of any current maintenance term upon notice to Contractor. In the event that Authorized User does not initially acquire or discontinues maintenance of licensed Product, it may, at any time thereafter, reinstate maintenance for Product without any

additional penalties or other charges, by paying Contractor the amount which would have been due under the Contract for the period of time that such maintenance had lapsed, at then current NYS net maintenance rates.

~~**e. Permitted License Transfers**~~ As Licensee's business operations may be altered, expanded or diminished, licenses granted hereunder may be transferred or combined for use at an alternative or consolidated site not originally specified in the license, including transfers between Agencies ("permitted license transfers"). Licensee(s) do not have to obtain the approval of Contractor for permitted license transfers, but must give thirty (30) days prior written notice to Contractor of such move(s) and certify in writing that the Product is not in use at the prior site. There shall be no additional license or other transfer fees due Contractor, provided that: i) the maximum capacity of the consolidated machine is equal to the combined individual license capacity of all licenses running at the consolidated or transferred site (e.g., named users, seats, or MIPS); or ii) if the maximum capacity of the consolidated machine is greater than the individual license capacity being transferred, a logical or physical partition or other means of restricting access will be maintained within the computer system so as to restrict use and access to the Product to that unit of licensed capacity solely dedicated to beneficial use for Licensee. In the event that the maximum capacity of the consolidated machine is greater than the combined individual license capacity of all licenses running at the consolidated or transferred site, and a logical or physical partition or other means of restricting use is not available, the fees due Contractor shall not exceed the fees otherwise payable for a single license for the upgrade capacity.

~~**f. Restricted Use By Outsourcers / Facilities Management, Service Bureaus / or Other Third Parties**~~ Outsourcers, facilities management or service bureaus retained by Licensee shall have the right to use the Product to maintain Licensee's business operations, including data processing, for the time period that they are engaged in such activities, provided that: 1) Licensee gives notice to Contractor of such party, site of intended use of the Product, and means of access; and 2) such party has executed, or agrees to execute, the Product manufacturer's standard nondisclosure or restricted use agreement which executed agreement shall be accepted by the Contractor ("Non-Disclosure Agreement"); and 3) if such party is engaged in the business of facility management, outsourcing, service bureau or other services, such third party will maintain a logical or physical partition within its computer system so as to restrict use and access to the program to that portion solely dedicated to beneficial use for Licensee. In no event shall Licensee assume any liability for third party's compliance with

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the terms of the Non-Disclosure Agreement, nor shall the Non-Disclosure Agreement create or impose any liabilities on the State or Licensee.

Any third party with whom a Licensee has a relationship for a state function or business operation, shall have the temporary right to use Product (e.g., JAVA Applets), provided that such use shall be limited to the time period during which the third party is using the Product for the function or business activity.

**g. Archival Back-Up and Disaster Recovery** Licensee may use and copy the Product and related Documentation in connection with: i) reproducing a reasonable number of copies of the Product for archival backup and disaster recovery procedures in the event of destruction or corruption of the Product or disasters or emergencies which require Licensee to restore backup(s) or to initiate disaster recovery procedures for its platform or operating systems; ii) reproducing a reasonable number of copies of the Product and related Documentation for cold site storage. "Cold Site" storage shall be defined as a restorable back-up copy of the Product not to be installed until and after the declaration by the Licensee of a disaster; iii) reproducing a back-up copy of the Product to run for a reasonable period of time in conjunction with a documented consolidation or transfer otherwise allowed herein. "Disaster Recovery" shall be defined as the installation and storage of Product in ready-to-execute, back-up computer systems prior to disaster or breakdown which is not used for active production or development.

**h. Confidentiality Restrictions** The Product is a trade secret, copyrighted and proprietary product. Licensee and its employees will keep the Product strictly confidential and Licensee will not disclose or otherwise distribute or reproduce any Product to anyone other than as authorized under the terms of Contract. Licensee will not remove or destroy any proprietary markings of Contractor.

**i. Restricted Use by Licensee** Except as expressly authorized by the terms of license, Licensee shall not:

(i) Copy the Product;

(ii) Cause or permit reverse compilation or reverse assembly of all or any portion of the Product;

(iii) Export the Licensed Software in violation of any U.S. Department of Commerce export administration regulations.

**79. PRODUCT ACCEPTANCE** Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, Authorized User(s) shall have thirty (30) days from the date of delivery to accept hardware products and sixty (60) days from the date of delivery to accept all other Product. Where the Contractor is responsible for installation, acceptance shall be from completion of installation. Failure to provide notice of acceptance or rejection or a deficiency statement to the Contractor by the end of the period provided for under this clause constitutes acceptance by the Authorized User(s) as of the expiration of that period. The License Term shall be extended by the time periods allowed for trial use, testing and acceptance unless the Commissioner or Authorized User agrees to accept the Product at completion of trial use.

Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, Authorized User shall have the option to run testing on the Product prior to acceptance, such tests and data sets to be specified by User. Where using its own data or tests, Authorized User must have the tests or representative set of data available upon delivery. This demonstration will take the form of a documented installation test, capable of observation by the Authorized User, and shall be made part of the Contractor's standard documentation. The test data shall remain accessible to the Authorized User after completion of the test.

In the event that the documented installation test cannot be completed successfully within the specified acceptance period, and the Contractor or Product is responsible for the delay, Authorized User shall have the option to cancel the order in whole or in part, or to extend the testing period for an additional thirty (30) day increment. Authorized User shall notify Contractor of acceptance upon successful completion of the documented installation test. Such cancellation shall not give rise to any cause of action against the Authorized User for damages, loss of profits, expenses, or other remuneration of any kind.

If the Authorized User elects to provide a deficiency statement specifying how the Product fails to meet the specifications within the testing period, Contractor shall have thirty (30) days to correct the deficiency, and the Authorized User shall have an additional sixty (60) days to evaluate the Product as provided



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herein. If the Product does not meet the specifications at the end of the extended testing period, Authorized User, upon prior written notice to Contractor, may then reject the Product and return all defective Product to Contractor, and Contractor shall refund any monies paid by the Authorized User to Contractor therefor. Costs and liabilities associated with a failure of the Product to perform in accordance with the functionality tests or product specifications during the acceptance period shall be borne fully by Contractor to the extent that said costs or liabilities shall not have been caused by negligent or willful acts or omissions of the Authorized User's agents or employees. Said costs shall be limited to the amounts set forth in the Limitation of Liability Clause for any liability for costs incurred at the direction or recommendation of Contractor.

**80. AUDIT OF LICENSED PRODUCT USAGE** Contractor shall have the right to periodically audit, no more than annually, at Contractor's expense, use of licensed Product at any site where a copy of the Product resides provided that: (i) Contractor gives Licensee(s) at least thirty (30) days advance written notice, (ii) such audit is conducted during such party's normal business hours, (iii) the audit is conducted by an independent auditor chosen on mutual agreement of the parties. Contractor shall recommend a minimum of three (3) auditing/accounting firms from which the Licensee will select one (1). In no case shall the Business Software Alliance (BSA), Software Publishers Association (SPA), Software and Industry Information Association (SIIA) or Federation Against Software Theft (FAST) be used directly or indirectly to conduct audits, or be recommended by Contractor; (iv) Contractor and Licensee are each entitled to designate a representative who shall be entitled to participate, and who shall mutually agree on audit format, and simultaneously review all information obtained by the audit. Such representatives also shall be entitled to copies of all reports, data or information obtained from the audit; and (v) if the audit shows that such party is not in compliance, Licensee shall be required to purchase additional licenses or capacities necessary to bring it into compliance and shall pay for the unlicensed capacity at the NYS Net Price in effect at time of audit, or if none, then at the Contractor's U.S. Commercial list price. Once such additional licenses or capacities are purchased, Licensee shall be deemed to have been in compliance retroactively, and Licensee shall have no further liability of any kind for the unauthorized use of the software.

**81. OWNERSHIP/TITLE TO PROJECT DELIVERABLES**

**a. Definitions**

~~(i) For purposes of this paragraph, "Products." A deliverable furnished under this Contract by or through Contractor, including existing and custom Products, including, but not limited to: a) components of the hardware environment, b) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings); whether printed in hard copy or maintained on diskette, CD, DVD or other electronic media c) third party software, d) modifications, customizations, custom programs, program listings, programming tools, data, modules, components, and e) any properties embodied therein, whether in tangible or intangible form (including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, source code, object code).~~

~~(ii) For purposes of this paragraph, "Existing Products." Tangible Products and intangible licensed Products that exist prior to the commencement of work under the Contract. Contractor bears the burden of proving that a particular product was in existence prior to the commencement of the Project.~~

~~(iii) For purposes of this paragraph, "Custom Products." Products, preliminary, final or otherwise which are created or developed by Contractor, its Subcontractors, partners, employees or agents for Authorized User under the Contract.~~

**b. Title to Project Deliverables** Contractor acknowledges that it is commissioned by the Authorized User to perform the services detailed in the Purchase Order. Unless otherwise specified in writing in the Bid or Purchase Order, the Authorized User shall have ownership and license rights as follows:

**(i) Existing Products:**

~~1. **Hardware** Title and ownership of Existing Hardware Product shall pass to Authorized User upon Acceptance.~~

~~2. **Software** Title and ownership to Existing Software Product(s) delivered by Contractor under the Contract that is normally commercially distributed on a license basis by the Contractor or other independent software vendor proprietary owner ("Existing Licensed Product"), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with Contractor or the proprietary owner of other independent software vendor(s) (ISV). Effective upon acceptance, such Product shall be licensed to Authorized User in accordance with the Contractor or ISV owner's standard license agreement, provided, however, that such standard~~

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license, must, at a minimum: (a) grant Authorized User a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless Contractor advises Authorized User as part of Contractor's proposal that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the Authorized User's satisfaction) and distribute Existing Licensed Product to the Authorized User up to the license capacity stated in the Purchase Order or work order with all license rights necessary to fully effect the general business purpose(s) stated in the Bid or Authorized User's Purchase Order or work order, including the financing assignment rights set forth in paragraph (c) below; and (b) recognize the State of New York as the licensee where the Authorized User is a state agency, department, board, commission, office or institution. Where these rights are not otherwise covered by the ISV's owner's standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense. The Authorized User shall reproduce all copyright notices and any other legend of ownership on any copies authorized under this paragraph.

~~(ii.) **Custom Products:** Effective upon creation of Custom Products, Contractor hereby conveys, assigns and transfers to Authorized User the sole and exclusive rights, title and interest in Custom Product(s), whether preliminary, final or otherwise, including all trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor, its agents, employees, or Subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under a Purchase Order, project definition or work order in the course of Contractor's business. Authorized User may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of Authorized User taking exclusive ownership and title to such Products. In such case, Licensee on behalf of all Authorized Users shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purpose(s) as stated in paragraph (b)(i)(2), above.~~

~~**c. Transfers or Assignments to a Third Party Financing Agent** It is understood and agreed by the parties that a condition precedent to the consummation of the purchase (s) under the Contract may be the obtaining of acceptable third party financing by the Authorized User. The Authorized User shall make the sole determination of the acceptability of any~~

~~financing proposal. The Authorized User will make all reasonable efforts to obtain such financing, but makes no representation that such financing has been obtained as of the date of Bid receipt. Where financing is used, Authorized User may assign or transfer its rights in Licensed Products (existing or custom) to a third party financing entity or trustee ("Trustee") as collateral where required by the terms of the financing agreement. Trustee's sole rights with respect to transferability or use of Licensed Products shall be to exclusively sublicense to Authorized User all of its Licensee's rights under the terms and conditions of the License Agreement; provided, further, however, in the event of any termination or expiration of such sublicense by reason of payment in full, all of Trustee's rights in such Licensed Product shall terminate immediately and Authorized User's prior rights to such Existing Licensed Product shall be revived.~~

~~**d. Sale or License of Custom Products Involving Tax-Exempt Financing (i.e., Certificates of Participation - COPS)**~~

~~The Authorized User's sale or other transfer of Custom Products which were acquired by the Authorized User using third party, tax-exempt financing may not occur until such Custom Products are, or become, useable. In the event that the Contractor wishes to obtain ownership rights to Custom Product(s), the sale or other transfer shall be at fair market value determined at the time of such sale or other transfer, and must be pursuant to a separate written agreement in a form acceptable to the Authorized User which complies with the terms of this paragraph.~~

~~**e. Contractor's Obligation with Regard to ISV (Third Party) Product**~~

~~Where Contractor furnishes Existing Licensed Product(s) as a Project Deliverable, and sufficient rights necessary to effect the purposes of this section are not otherwise provided in the Contractor or ISV's standard license agreement, Contractor shall be responsible for obtaining from the ISV third party proprietary owner/developer the rights set forth herein to the benefit of the Authorized User at Contractor's sole cost and expense.~~

~~**82. PROOF OF LICENSE**~~

~~The Contractor must provide to each Licensee who places a Purchase Order either: (i) the Product developer's certified License Confirmation Certificates in the name of such Licensee; or (ii) a written confirmation from the Proprietary owner accepting Product invoice as proof of license. Contractor shall submit a sample certificate, or alternatively such written confirmation from the proprietary~~

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developer. Such certificates must be in a form acceptable to the Licensee.

~~**83. PRODUCT VERSION** Purchase Orders shall be deemed to reference Manufacturer's most recently released model or version of the Product at time of order, unless an earlier model or version is specifically requested in writing by Authorized User and Contractor is willing to provide such version.~~

~~**84. CHANGES TO PRODUCT OR SERVICE OFFERINGS**~~

~~**a. Product or Service Discontinuance** Where Contractor is the Product Manufacturer/Developer, and Contractor publicly announces to all U.S. customers ("date of notice") that a Product is being withdrawn from the U.S. market or that maintenance service or technical support provided by Contractor ("withdrawn support") is no longer going to be offered, Contractor shall be required to: (i) notify the Commissioner, each Licensee and each Authorized User then under contract for maintenance or technical support in writing of the intended discontinuance; and (ii) continue to offer Product or withdrawn support upon the Contract terms previously offered for the greater of: a) the best terms offered by Contractor to any other customer, or b) not less than twelve (12) months from the date of notice; and (iii) at Authorized User's option, provided that the Authorized User is under contract for maintenance on the date of notice, either: provide the Authorized User with a Product replacement or migration path with at least equivalent functionality at no additional charge to enable Authorized User to continue use and maintenance of the Product.~~

~~In the event that the Contractor is not the Product Manufacturer, Contractor shall be required to: (i) provide the notice required under the paragraph above, to the entities described within five (5) business days of Contractor receiving notice from the Product Manufacturer, and (ii) include in such notice the period of time from the date of notice that the Product Manufacturer will continue to provide Product or withdraw support.~~

~~The provisions of this subdivision (a) shall not apply or eliminate Contractor's obligations where withdrawn support is being provided by an independent Subcontractor. In the event that such Subcontractor ceases to provide service, Contractor shall be responsible for subcontracting such service, subject to state approval, to an alternate Subcontractor.~~

~~**b. Product or Service Re-Bundling** In the event that Contractor is the Product manufacturer and publicly announces to all U.S. customers ("date of notice") that a Product or maintenance or technical support offering is being re-bundled in a different manner from the structure or licensing model of the prior U.S. commercial offering, Contractor shall be required to: (i) notify the State and each Authorized User in writing of the intended change; (ii) continue to provide Product or withdrawn support upon the same terms and conditions as previously offered on the then-current NYS Contract for the greater of: a) the best terms offered by Contractor to any other customer, or b) not less than twelve (12) months from the date of notice; and (iii) shall submit the proposed rebundling change to the Commissioner for approval prior to its becoming effective for the remainder of the Contract term. The provisions of this section do not apply if the Contractor is not the Product manufacturer.~~

~~**85. NO HARDSTOP/PASSIVE LICENSE MONITORING**~~

~~Unless an Authorized User is otherwise specifically advised to the contrary in writing at the time of order and prior to purchase, Contractor hereby warrants and represents that the Product and all Upgrades do not and will not contain any computer code that would disable the Product or Upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as "time bombs," "time locks," or "drop dead" devices) or that would permit Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a "trap door" device). Contractor agrees that in the event of a breach or alleged breach of this provision that Authorized User shall not have an adequate remedy at law, including monetary damages, and that Authorized User shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which Authorized User shall be entitled.~~

~~**86. SOURCE CODE ESCROW FOR LICENSED PRODUCT**~~

~~If Source Code or Source Code escrow is offered by either Contractor or Product manufacturer or developer to any other commercial customers, Contractor shall either: (i) provide Licensee with the Source Code for the Product; or (ii) place the Source Code in a third party escrow arrangement with a designated escrow agent who shall be named and identified to the State, and who shall be directed to release the deposited Source Code in accordance with a standard escrow agreement acceptable to the State; or (iii) will certify to the State that the Product manufacturer/developer has named the State, acting by~~

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~~and through the Authorized User, and the Licensee, as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named and identified to the State and Licensee, and who shall be directed to release the deposited Source Code in accordance with the terms of escrow. Source Code, as well as any corrections or enhancements to such source code, shall be updated for each new release of the Product in the same manner as provided above and such updating of escrow shall be certified to the State in writing. Contractor shall identify the escrow agent upon commencement of the Contract term and shall certify annually that the escrow remains in effect in compliance with the terms of this paragraph.~~

~~The State may release the Source Code to Licensees under this Contract who have licensed Product or obtained services, who may use such copy of the Source Code to maintain the Product.~~

~~FOR NEGOTIATED CONTRACTS THE FOLLOWING CLAUSES ARE RESERVED BECAUSE BIDDING DOES NOT APPLY:~~

~~Clauses: 7, 8, 9, 10, 11, 12, 13, 16, 15, 21, 25, 26, 28, 29, 30, 31, 32, 33, 36, 49, 50, 52, 54 and 37~~



## Appendix C

### Participation by Minority Group Members and Women with Respect to State Contracts

In accordance with Article 15-A of the Executive Law, the parties to the attached contract, (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract:

1. Definitions

- a) "Certified business" shall mean a business verified as a minority- or women-owned business enterprise pursuant to Section 314 of the Executive Law.
- b) "Director" shall mean the Director of the Division of Minority and Women's Business Development established by Section 117 of Article 4A of the Economic Development Law.
- c) "Goal" shall mean a percentage of the value of the contract, which is not set aside or quota, that represents a target toward which the Contractor must aim in expending good faith efforts to ensure the participation of minority group members and women on the contract.
- d) "Minority group member" shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups:
  - i) Black persons having origins in any of the Black African racial groups;
  - ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race;
  - iii) Native American or Alaskan native persons having origins in any of the original peoples of North America;
  - iv) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.
- e) "Minority-owned business enterprise" shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is:
  - i) at least fifty-one percent owned by one or more minority group members;
  - ii) an enterprise in which such minority ownership is real, substantial and continuing;
  - iii) an enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and
  - iv) an enterprise authorized to do business in this state and independently owned and operated.
- f) "Subcontract" shall mean an agreement providing for a total expenditure in excess of \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon between a contract and any individual or business enterprise, including a sole proprietorship, partnership, corporation, or not-for-profit corporation, in which a portion of a Contractor's

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obligation under a state contract is undertaken or assumed, but shall not include work undertaken for the beneficial use of the Contractor.

- g) "Women-owned business enterprise" shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is:
- i) at least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are women;
  - ii) an enterprise in which the ownership interest of such women is real, substantial and continuing;
  - iii) an enterprise in which such women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and
  - iv) an enterprise authorized to do business in this state and independently owned and operated.

2. Directory of Certified Businesses

The Directory of Certified Businesses is available at <http://www.nylovesmwbe.ny.gov/>

3. Equal Employment Opportunities

- a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group persons and women are afforded equal opportunity without discrimination. Such programs shall include, but not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.
- b) At the request of Tax and Finance 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 and which is involved in the performance of this contract to furnish a written statement that such employment agency, labor union or representative shall not discriminate because of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will cooperate in the implementation of the Contractor's obligation hereunder.
- c) The Contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the Contractor in the performance of this contract, that all qualified applicants will be afforded equal employment opportunity without discrimination because of race, creed, color, national origin, sex age, disability or marital status.
- d) The Contractor will include the provisions of clauses (a), (b) and (c) above in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to its work in connection with this contract.
- e) The provisions of these equal employment clauses shall not be binding upon Contractors or subcontractors in the performance of work or the provision of services or another activity that are unrelated, separate or distinct from the State contract as expressed by its terms.
- f) The requirements of these equal employment clauses shall not apply to any employment outside this State or application for employment outside this State or solicitations or advertisements therefore, or any existing

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programs or affirmative action regarding employment outside this State and the effect of contract provisions required by clauses (a), (b) and (c) above shall be so limited.

4. Minority- and Women-Owned Business Enterprise Utilization Plan; Equal Employment Opportunity Program; Waivers
  - a) If goals have been established by Tax and Finance for this agreement, no later than seven business days after receiving notice that the bidder has submitted the lowest responsible bid, the bidder shall submit to Tax and Finance a Minority- and Women-Owned Business Enterprise (M/WBE) utilization plan on forms to be provided by Tax and Finance. The M/WBE utilization plan shall list those M/WBEs, which will be used by the Contractor to meet the contracts M/WBE goals.
  - b) Tax and Finance will review the M/WBE utilization plan and will issue to the Contractor a written notice of acceptance or deficiency within twenty calendar days of receipt. An M/WBE notice of deficiency shall include (i) the name of any M/WBE which is not acceptable for the purpose of complying with the goal requirements' (ii) elements of the contract scope of the work which Tax and Finance has determined can be reasonably structured by the Contractor to increase the likelihood of participation in the contract by M/WBEs; and (iii) other information which Tax and Finance determines to be relevant to the utilization plan.
  - c) The Contractor shall respond to the notice of deficiency within seven business days of receipt by submitting to Tax and Finance a written statement, which remedies the deficiencies in the original plan. If the written remedy which the Contractor submits is not timely or is found by Tax and Finance to be inadequate, Tax and Finance shall so notify the Contractor within five business days and direct the Contractor to submit a request for a partial or total waiver of goal requirements on forms to be provided by Tax and Finance. The request for waiver must be submitted within five business days of receipt from Tax and Finance of a notice that the Contractor's statement of remedy was untimely or inadequate.
  - d) A Contractor who has made good faith efforts to obtain commitments from M/WBE sub-contractors and suppliers prior to submitting its M/WBE utilization plan may submit a request for waiver at the same time it submits its utilization plan. If a request for waiver is submitted with the utilization plan, and is not accepted by Tax and Finance at that time, the provisions of clauses (b) and (c), regarding the notice of deficiency and written remedy, will apply. In this case, the Contractor may submit a second request for waiver as directed by Tax and Finance.
  - e) If the Contractor does not submit a request for waiver, or if Tax and Finance determines that the good faith efforts of the Contractor have been inadequate to justify the granting of the request for waiver, Tax and Finance may make a determination that the Contractor's failure to remedy deficiencies is non-responsible and disqualify the bid or proposal. Notice of disqualification, along with a denial of a request for waiver, where applicable, shall be delivered to the Contractor no later than twenty calendar days after Tax and Finance receives the request for waiver.
  - f) If Tax and Finance disqualifies the bidder as non-responsible for failure to remedy deficiencies in its M/WBE utilization plan and to document good faith efforts, Tax and Finance may award the contract to the next-lower responsible or otherwise acceptable bidder, whether or not the disqualified bidder pursues any remedies established pursuant to Article 15A of the Executive Law.
  - g) The Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its M/WBE utilization plan, at least to the extent indicated in the plan.
5. Administrative Hearing on Disqualification

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- a) If Tax and Finance disqualifies the bid on the grounds that the contract has failed to remedy the deficiencies in its M/WBE utilization plan or to document good faith efforts to remedy such deficiencies and is, therefore, determined to be non-responsible, the Contractor shall be entitled to an administrative hearing, on the record, before a hearing officer appointed by Tax and Finance, to review the determination of disqualification of the bid and determination of non-responsibility. The Contractor shall request such hearing in writing no less than seven business days of receipt of notice of disqualification. The determination of the hearing officer shall not interfere with Tax and Finance disposition of the contract. The hearing shall be conducted pursuant to Article 3 of the State Administrative Procedures Act, as it applies to these circumstances. The rules and regulations of Article 15-A override any inconsistencies with Article 3.
- b) The hearing officer's determination shall be a final administrative determination of Tax and Finance and shall be reviewable by the proceeding brought pursuant to the Civil Practice Law and Rules, provided such proceeding is commenced within thirty days of notice given by Certified Mail, return receipt requested, rendering such final administrative determination in accordance with the provisions of Section 313 of the Executive Law.
- c) Such review shall be commenced in the Supreme Court, Appellate Division, Third Department, and shall be preferred over all other civil causes except election causes, and shall be heard and determined in preference to all other civil business pending therein, except election matters, irrespective of position on the calendar. Appeals taken to the Court of Appeals of the State of New York shall be subject to the same preference.

6. Good-Faith Efforts

In order to show that it has made good-faith efforts to comply with the goal requirements of this contract, if applicable, the Contractor shall submit such documentation that will enable Tax and Finance to make a determination in accordance with the following criteria:

- a) Was a completed, acceptable utilization plan submitted in accordance with applicable requirements to meet goals for participation of certified minority and women-owned business enterprises established in the State contract?
- b) Were advertisements placed in appropriate general circulation, trade and minority- and women-oriented publications in a timely fashion?
- c) Were written solicitations made in a timely fashion of certified minority- and women-owned business enterprises listed in the directory of certified businesses?
- d) Were timely responses to any such advertisements and solicitations provided by certified minority- and women-owned business enterprises?
- e) Did the Contractor attend pre-bid, pre-award, or other meetings, if any, scheduled by the state agency awarding the state contract, with certified minority- or women-owned business enterprises which the state agency determined were capable of performing the state contract scope of work, for purposes of complying with goal requirements?
- f) What efforts were undertaken by the Contractor to reasonably structure the contract scope of work for purposes of subcontracting with certified minority- and women-owned business enterprises?
- g) How many minority- and women-owned business enterprises in the directory of certified businesses could perform work required by the State contract scope of work in the region as defined in paragraphs (1) and

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(2) of subdivision (a) of Section 543.2 of this part?

- h) What actions were taken to contact and assess the financial ability of certified minority- and women-owned business enterprises to participate on the State contract, which enterprises are located outside of the region in which the State contract scope of work was or will be performed?
- i) Were relevant plans, specifications or terms and conditions of the state contract, necessary to prepare an informed response to a Contractor solicitation, provided in a timely fashion to certified minority- or women-owned business enterprises?
- j) What subcontract terms and conditions were offered to certified minority- and women-owned business enterprises, and how do those subcontract terms and conditions compare to those offered in the ordinary course of the Contractor's business and to other subcontractors of the Contractor?
- k) Has the Contractor made payments for work performed by certified minority- and women-owned business enterprises in a timely fashion so as to facilitate continued performance by certified minority- or women-owned business enterprises? and,
- l) Has the Contractor offered to make up any inability to comply with the minority- and women-owned business enterprise goals established in a State contract, in other State contracts being performed or to be awarded to the Contractor?

7. Compliance Reports

The Contractor shall submit, and shall require sub-contractors to submit, compliance reports on forms and at intervals to be established by Tax and Finance. Reports not submitted at such times as shall be required by Tax and Finance may be cause for Tax and Finance to delay implementing scheduled payments to the Contractor.

8. Contractor's Failure or Inability to Meet Goal Requirements

- a) If the Contractor, after making good-faith efforts, is unable to comply with a contract's M/WBE goal requirements, where applicable, the Contractor may submit a request for a partial or total waiver on forms to be provided by Tax and Finance. If the documentation required with the request for waiver is complete, Tax and Finance shall evaluate the request and issue a written notice of acceptance or denial within twenty calendar days of receipt.
- b) If Tax and Finance, upon review of the Contractor's M/WBE utilization plan and the Contractor's compliance reports, determines that the Contractor is failing or refusing to comply with the contract's M/WBE requirements, and no waiver has been issued in regards to such non-compliance, Tax and Finance may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of M/WBE goal requirements.

9. Contractor and Agency Complaints; Arbitration

- a) If the Contractor submits a request for waiver of M/WBE goal requirements and Tax and Finance denies the request or fails to respond in any way within twenty days of receiving it, the Contractor may file a complaint with the Director according to the provisions of Section 316 of Article 15-A of the Executive Law. The complaint must be filed within twenty calendar days of Tax and Finance receipt of the request for waiver, if Tax and Finance has not responded in that time, or with twenty calendar days of a notification that the request has been denied by Tax and Finance.

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- b) If the Contractor fails to respond to a notice of deficiency, or if Tax and Finance denies a request for waiver of M/WBE goal requirements, Tax and Finance shall file a complaint with the Director pursuant to Section 316 of Article 15-A of the Executive Law.
- c) A complaint should set forth the facts and circumstances giving rise to the complaint together with a demand for relief.
- d) The party filing a complaint, whether the Contractor or Tax and Finance, shall deliver a copy to the other party. Both the complaint and the copy shall be delivered by either personal service or by Certified Mail, return receipt requested.
- e) Upon receipt of a complaint, the Director shall provide the party against whom the complaint has been filed with an opportunity to respond to the complaint. If within thirty days of receipt of the complaint, the Director is unable to resolve the complaint to the satisfaction of Tax and Finance and the Contractor, the complaint shall be referred to the American Arbitration Association for resolution pursuant to Section 316 of Article 15-a of the Executive Law.
- f) Upon conclusion of the arbitration proceedings, the arbitrator will submit to the Director his/her award regarding the alleged violation of the contract or the refusal of Tax and Finance to grant a waiver request by the Contractor. The award of the arbitrator with respect to an alleged violation of the contract or the refusal of the State agency to a waiver shall be final and may be vacated or modified only as provided by Article 75 of the Civil Practice Law and Rules.
- g) Upon conclusion of the arbitration proceedings and the rendition of an award, the arbitrator will also recommend to the Director a remedy, including, if appropriate, the imposition of the sanctions, fines or penalties, provided however, that no fines or penalties shall be recommended with respect to the refusal of Tax and Finance to grant a waiver requested by a Contractor. The Director will either (i) adopt the recommendation of the arbitrator; (ii) determine that no sanctions, fines or penalties should be imposed; or (iii) modify the recommendation of the arbitrator, provided that such modification shall not expand upon any sanction recommended or imposed; or (iv) modify the recommendation of the arbitrator, provided that such modification shall not expand upon any sanction recommended or imposed any new sanction, or increase the amount of any recommended fine or penalty.
- h) The Director, within ten days of receipt of the arbitrator's award and recommendations, will file a determination of such matter and shall cause a copy of such determination to be served upon the parties by personal service or by Certified Mail, return receipt requested. The determination of the Director as to the imposition of any fines, sanctions, or penalties shall be reviewable pursuant to Article 78 of the Civil Practice Law and Rules.

**APPENDIX D**

**Bid Administration Documents**

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D-1	Notification of Intent to Bid
D-2	Bidder's Attestation Form
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D-5	Contractor Certification (ST-220)
D-6	Procurement Lobbying Compliance Form
D – 7	Public Officers Law

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Appendix D – 1 – Notification of Intent to Bid

REQUEST FOR PROPOSAL TO PROVIDE PIT REFUND  
CONTROLLED DISBURSEMENT, DIRECT DEPOSIT and DEBIT CARD SERVICES

Please indicate your interest in submitting a proposal for this acquisition by completing and returning this form (certified mail, return receipt requested).

Bidder's Name \_\_\_\_\_ Federal ID #: \_\_\_\_\_

Bidder's Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contact Name: \_\_\_\_\_ e-mail Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax: \_\_\_\_\_

Module 1 - Pit Controlled Disbursement and Direct Deposit

Module 2 – Debit Cards

=====

Authorized Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Please check the appropriate box (es):**

- A.  We **are** interested in submitting a proposal.  
B.  We **are** a certified minority or women owned business.

=====

- C.  We **are not** interested in submitting a proposal for this service.

**Reason for not participating:** \_\_\_\_\_



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Appendix D – 2 – Bidders Attestation Form

**The bidder's signature below indicates the bidder has read and agrees to the  
general contract requirements and conditions, as outlined and defined in this RFP**

Firm Name:

---

Authorized Representative:

---

Representative Signature:

---

Date:

---

FEIN:

---

**Appendix D -3 – Non Collusive Bidding Certification**

In accordance with Section 139-d of the State Finance Law:

- (a) By submission of this bid, bidder and each person signing on behalf of any bidder certifies, and in the case of joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:
1. The prices in this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
  2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and
  3. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.
- (b) A bid shall not be considered for award nor shall any award be made where (a), (1), (2), and (3) above have not been complied with; provided however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefore. Where (a), (1), (2), and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the state, public department or agency to which the bid was made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that a bidder has published price lists, rates, or tariffs covering items or services being procured, has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or has sold the same items to other customers at the same prices being bid, does not constitute a disclosure within the meaning stated above.

The bidder certifies adherence to all conditions in the Bidding Practices subsection of this RFP.

Bidder's Name: \_\_\_\_\_

Bidder's Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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Appendix D – 4 – MacBride Fair Employment Principals Form

Bidder Name: \_\_\_\_\_

“NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND:  
MacBRIDE FAIR EMPLOYMENT PRINCIPLES”

In accordance with Chapter 807 of the Laws of 1992, the bidder, by submission of this bid, certifies that it, and any individual or legal entity in which the bidder holds a 10% or greater ownership interest, and any individual or legal entity that holds a 10% or greater ownership interest in the bidder, either:

(Answer Yes to one of the following as applicable),

1. Have no business operations in Northern Ireland: \_\_\_\_ Yes

or

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

\_\_\_\_ Yes

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**Appendix D – 5 – Contractor Certification**



New York State Department of Taxation and Finance

**Contractor Certification to Covered Agency**  
(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

**ST-220-CA**  
(6/06)

**For information, consult Publication 223, Questions and Answers Concerning Tax Law Section 5-a (see Need Help? on back).**

Contractor name		<i>For covered agency use only Contract number or description</i>
Contractor's principal place of business	City State ZIP code	
Contractor's mailing address (if different than above)		<i>Estimated contract value over the full term of contract (but not including renewals)</i>
Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)	
Contractor's telephone number	Covered agency name	\$
Covered agency address		Covered agency telephone number

I, \_\_\_\_\_, hereby affirm, under penalty of perjury, that I am \_\_\_\_\_

(name) (title)

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:

*(Mark an X in only one box)*

- The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.
- The contractor has previously filed Form ST-220-TD with the Tax Department in connection with \_\_\_\_\_  
(insert contract number or description)  
and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_  
(sign before a notary public) (title)

**Instructions**

**General information**

Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, *Contractor Certification to Covered Agency*, with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. This publication is available on our Web site, by fax, or by mail. (See *Need help?* for more information on how to obtain this publication.) In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed.

If you have questions, please call our information center at 1 800 698-2931.

**Note:** Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

**When to complete this form**

- As set forth in Publication 223, a contract is subject to section 5-a, and you must make the required certification(s), if:
- i. The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);
  - ii. The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and
  - iii. The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of \$100,000 and (b) is a contract for *commodities or services*, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned on or after April 26, 2006 (the effective date of the section 5-a amendments).



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New York State Department of Taxation and Finance

**Contractor Certification**

(Pursuant to Section 5-a of the Tax Law, as amended,  
effective April 26, 2006)

**ST-220-TD**

(6/06)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need help?* below).

Contractor name			
Contractor's principal place of business	City	State	ZIP code
Contractor's mailing address (if different than above)			
Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)	Contractor's telephone number ( )	
Covered agency name	Contract number or description	Estimated contract value over the full term of contract (but not including renewals) \$	
Covered agency address	Covered agency telephone number		

**General information**

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded certain state contracts valued at more than \$100,000 to certify to the Tax Department that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specified period. In addition, contractors must certify to the Tax Department that each affiliate and subcontractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also file a Form ST-220-CA, certifying to the procuring state entity that they filed Form ST-220-TD with the Tax Department and that the information contained on Form ST-220-TD is correct and complete as of the date they file Form ST-220-CA.

For more detailed information regarding this form and section 5-a of the Tax Law, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a*, (as amended, effective April 26, 2006), available at [www.nystax.gov](http://www.nystax.gov). Information is also available by calling the Tax Department's Contractor Information Center at 1 800 698-2931.

**Note:** Form ST-220-TD must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 4 of this form must be completed before a notary public.

Mail completed form to:

NYS TAX DEPARTMENT  
DATA ENTRY SECTION  
W A HARRIMAN CAMPUS  
ALBANY NY 12227

**Privacy notification**

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

**Need help?**

	<b>Internet access:</b> <a href="http://www.nystax.gov">www.nystax.gov</a> (for information, forms, and publications)
	<b>Fax-on-demand forms:</b> 1 800 748-3676
	<b>Telephone assistance</b> is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday.
	To order forms and publications: 1 800 462-8100
	Sales Tax Information Center: 1 800 698-2909
	From areas outside the U.S. and outside Canada: (518) 485-6800
	<b>Hearing and speech impaired</b> (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110
	<b>Persons with disabilities:</b> In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.

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I, \_\_\_\_\_, hereby affirm, under penalty of perjury, that I am \_\_\_\_\_  
*(name)* *(title)*  
of the above-named contractor, and that I am authorized to make this certification on behalf of such contractor.

Make only one entry in each section below.

**Section 1 — Contractor registration status**

- The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made. The contractor is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law, and is listed on Schedule A of this certification.
- The contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

**Section 2 — Affiliate registration status**

- The contractor does not have any affiliates.
- To the best of the contractor's knowledge, the contractor has one or more affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more affiliates, and each affiliate has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

**Section 3 — Subcontractor registration status**

- The contractor does not have any subcontractors.
- To the best of the contractor's knowledge, the contractor has one or more subcontractors having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more subcontractors, and each subcontractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Sworn to this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_  
*(sign before a notary public)*

\_\_\_\_\_  
*(title)*

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**Schedule A — Listing of each person (contractor, affiliate, or subcontractor) exceeding \$300,000 cumulative sales threshold**

List the contractor, or affiliate, or subcontractor in Schedule A only if such person exceeded the \$300,000 cumulative sales threshold during the specified sales tax quarters. See directions below. For more information, see Publication 223.

A Relationship to Contractor	B Name	C Address	D Federal ID Number	E Sales Tax ID Number	F Registration in progress

- Column A – Enter **C** in column A if the contractor; **A** if an affiliate of the contractor; or **S** if a subcontractor.
- Column B – Name - If person is a corporation or limited liability company, enter the exact legal name as registered with the NY Department of State, if applicable. If person is a partnership or sole proprietor, enter the name of the partnership and each partner's given name, or the given name(s) of the owner(s), as applicable. If person has a different DBA (doing business as) name, enter that name as well.
- Column C – Address - Enter the street address of person's principal place of business. Do not enter a PO box.
- Column D – ID number - Enter the federal employer identification number (EIN) assigned to the person or person's business, as applicable. If the person is an individual, enter the social security number of that person.
- Column E – Sales tax ID number - Enter only if different from federal EIN in column D.
- Column F – If applicable, enter an X if the person has submitted Form DTF-17 to the Tax Department but has not received its certificate of authority as of the date of this certification.



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**Individual, Corporation, Partnership, or LLC Acknowledgment**

STATE OF                    }  
                                  :                    SS.:  
COUNTY OF                }

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me personally appeared \_\_\_\_\_, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that \_\_\_\_\_ he resides at \_\_\_\_\_, Town of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_; and further that:

[Mark an X in the appropriate box and complete the accompanying statement.]

- (If an individual): \_\_\_\_\_ he executed the foregoing instrument in his/her name and on his/her own behalf.
  
- (If a corporation): \_\_\_\_\_ he is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, \_\_\_\_\_ he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, \_\_\_\_\_ he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
  
- (If a partnership): \_\_\_\_\_ he is a \_\_\_\_\_ of \_\_\_\_\_, the partnership described in said instrument; that, by the terms of said partnership, \_\_\_\_\_ he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, \_\_\_\_\_ he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
  
- (If a limited liability company): \_\_\_\_\_ he is a duly authorized member of \_\_\_\_\_ LLC, the limited liability company described in said instrument; that \_\_\_\_\_ he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, \_\_\_\_\_ he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

\_\_\_\_\_  
Notary Public  
Registration No. \_\_\_\_\_

**Appendix D – 6 Procurement Lobbying Forms**

**New York State Department of Taxation and Finance  
Offerer Affirmation of Understanding of, and Compliance with, Procurement Lobbying Guidelines**

New York State Finance Law 139-j(6)(b) requires the DTF seek written affirmation from all Offerers as to the Offerer's understanding of and agreement to comply with the DTF procedures relating to permissible contacts during a Government Procurement pursuant to subdivision three of this section.

Procurement Description, Contract or Bid Number:

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Offerer Name: \_\_\_\_\_

Offerer Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

e-Mail Address: \_\_\_\_\_

Offerer affirms it has read, understands and agrees to comply with the Guidelines of the New York State Department of Taxation and Finance relative to permissible contacts as required by the State Finance Law 139-j(3) and 139-j(6)(b).

By *(signature)*: \_\_\_\_\_

Name *(please print)*: \_\_\_\_\_

Title *(please print)*: \_\_\_\_\_

Date: \_\_\_\_\_

**New York State Department of Taxation and Finance**

**Offerer Disclosure of Prior Non-Responsibility Determinations**

New York State Finance Law §139-k(2) obligates a Governmental Entity to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms “Offerer” and “Governmental Entity” are defined in State Finance Law § 139-k(1). State Finance Law §139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law §139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such contact does not fall within one of the exemptions).

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe. See State Finance Law §§139-j (10)(b) and 139-k(3).

A Governmental Entity must include a disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract. It shall be submitted to the Governmental Entity conducting the Governmental Procurement.

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**Offerer Disclosure of Prior Non-Responsibility Determinations**

Procurement Description, Contract or Bid Number:

\_\_\_\_\_

Offerer Name: \_\_\_\_\_

Offerer Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

e-Mail Address: \_\_\_\_\_

Name and Title of Person Submitting this Form: \_\_\_\_\_

\_\_\_\_\_

1. Has any New York State agency or authority made a finding of non-responsibility regarding the Offerer in the last four years? (Please circle):

No                      Yes

If yes, please answer the following questions:

2. Was the basis for the finding of the Offerer's non-responsibility due to a violation of State Finance Law 139-j? (Please circle):

No                      Yes

3. Was the basis for the finding of the Offerer's non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No                      Yes

4. If you responded yes to Questions 1, 2 or 3 , please provide details regarding the finding of non-responsibility below:

Government Entity: \_\_\_\_\_

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Date of Finding of Non-responsibility: \_\_\_\_\_

**Offerer Disclosure of Prior Non-Responsibility Determinations continued**

Facts Underlying Finding of Non-Responsibility (Add additional pages as necessary)

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5. Has any New York State agency or authority terminated a procurement contract with the Offerer due to the intentional provision of false or incomplete information? (Please circle):

No                      Yes

If you responded yes to the above question, please provide details regarding the termination below:

Government Entity: \_\_\_\_\_

Date of Finding of Non-responsibility: \_\_\_\_\_

Facts Underlying Finding of Non-Responsibility: (Add additional pages as necessary)

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**Offerer certifies that all information provided to the DTF with respect to State Finance Law 139-k is complete, true and accurate.**

By: *(Signature)*: \_\_\_\_\_

Name: *(Please print)* \_\_\_\_\_

Date: \_\_\_\_\_

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**New York State Department of Taxation and Finance**  
**Offerer's Certification of Compliance with State Finance Law 139-k(5)**

New York State Finance Law 139-k(5) requires that every Procurement Contract award subject to the provisions of State Finance Law 139-k or 139-j shall contain a certification by the Offerer that all information provided to the procuring Government Entity with respect to State Finance Law 139-k is complete, true and accurate.

**Offerer Certification**

I certify that all information provided to the DTF with respect to State Finance Law 139-k is complete, true and accurate.

By: *(signature)* \_\_\_\_\_

Date: \_\_\_\_\_

Procurement Description, Contract or Bid Number: \_\_\_\_\_

\_\_\_\_\_

Name *(Please print)*: \_\_\_\_\_

Title: \_\_\_\_\_

Offerer Name: \_\_\_\_\_

Offerer Address: \_\_\_\_\_

\_\_\_\_\_

Telephone Number: \_\_\_\_\_

e-Mail Address: \_\_\_\_\_

**Appendix D – 7 - PUBLIC OFFICERS LAW**

**§73.4 Business or professional activities by state officers and employees and party officers.**

(a) No statewide elected official, state officer or employee, member of the legislature, legislative employee or political party chairman or firm or association of which such person is a member, or corporation, ten per centum or more of the stock of which is owned or controlled directly or indirectly by such person, shall (i) sell any goods or services having a value in excess of twenty-five dollars to any state agency, or (ii) contract for or provide such goods or services with or to any private entity where the power to contract, appoint or retain on behalf of such private entity is exercised, directly or indirectly, by a state agency or officer thereof, unless such goods or services are provided pursuant to an award or contract let after public notice and competitive bidding. This paragraph shall not apply to the publication of resolutions, advertisements or other legal propositions or notices in newspapers designated pursuant to law for such purpose and for which the rates are fixed pursuant to law.

(b) No political party chairman of a county wholly included in a city with a population of more than one million, or firm or association of which such person is a member, or corporation, ten per centum or more of the stock of which is owned or controlled directly or indirectly by such person, shall (i) sell any goods or services having a value in excess of twenty-five dollars to any city agency, or (ii) contract for or provide such goods or services with or to any private entity where the power to contract, appoint or retain on behalf of such private entity is exercised directly or indirectly, by a city agency or officer thereof, unless such goods or services are provided pursuant to an award or contract let after public notice and competitive bidding. This paragraph shall not apply to the publication of resolutions, advertisements or other legal propositions or notices in newspapers designated pursuant to law for such purpose and for which the rates are fixed pursuant to law.

(c) For purposes of this subdivision, the term "services" shall not include employment as an employee.

I have read and agree to comply with the requirements of Public Officer's Law Section 73 (4) a.i. I further acknowledge that failure to comply shall justify contract termination by the Department and may result in the rejection of bids or proposals for future work with the Department.

By \_\_\_\_\_  
(Signature) (Title)

Firm's Legal Name \_\_\_\_\_  
(Date)

### **Appendix E – Bid Protest Policy**

It is the policy of the Department of Taxation and Finance contracting program (hereafter “DTF”) to provide all bidders with an opportunity to administratively resolve complaints or inquiries related to bid solicitations or pending contract awards. DTF encourages bidders to seek resolution of complaints concerning the contract award process through consultation with the program. All such matters will be accorded impartial and timely consideration.

#### **Informal Complaints/Protests**

It is strongly recommended that staff encourage, be receptive to and resolve issues, inquiries, questions and complaints on an informal basis, whenever possible. Information provided informally by any interested party should be fully reviewed by Program Team Leaders, the contract administrator of the Contract Management Unit and/or the Assistant Director, Procurement of the Office of Budget and Management Analysis. In addition, matters that are perceived to contain, or are potentially confidential or trade secret information should be shared with the Chief Financial Officer of the Office of Budget and Management Analysis for possible direction. Staff should document the subject matter and results of informal inquiries. As appropriate, DTF responses to the inquirer should indicate the existence of a formal protest policy available to them should the informal process fail to resolve the matter. To the extent applicable, DTF will include OGS in the consideration of complaints or inquiries related to this RFP, particularly with reference to Module 2.

In addition to informal inquiries, bidders may also file formal written protests according to the procedures specified below. Final agency determinations or recommendations for award generally may only be reconsidered in the context of a formal written protest.

#### **Formal Written Protests**

Any potential bidder who believes that there are errors or omissions in the procurement process, or that the bidder has been aggrieved in the drafting or issuance of a bid solicitation or pending contract award, may present to a formal complaint to DTF and request administrative relief concerning such action (“formal protest”).

#### **Submission of Bid or Award Protests**

##### **Deadline for Submission**

- a) Concerning Errors, Omissions or Prejudice in the Bid Specifications or Documents - Formal protests which concern the drafting of bid specifications must be received by DTF at least twenty (20) business days before the date set in the solicitation for receipt of bids. If the date set in the solicitation for receipt of bids is less than twenty (20) business days from the date of issue, formal protests concerning the specifications must be received by DTF at least seventy-two (72) hours before the time designated for receipt of bids.



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- b) Concerning Proposed Contract Award - Formal protests concerning a pending contract award must be received within five (5) business days after the protesting party (“protester”) knows or should have known of the facts which form the basis of the protest, and, where State Finance Law § 112 approval is required, prior to final approval of the recommendation by the State Comptroller.

**Transmittal**

A formal protest must be submitted in writing to DTF, by ground mail, or, where permitted in the solicitation, facsimile or e-mail transmission. The following statement must be clearly and prominently displayed on the envelope or package or header of electronic or facsimile transmittal: “Bid Protest of DTF Solicitation (Reference Number).”

**Contents**

A formal protest must include:

- (a) a statement of all legal and/or factual grounds for disagreement with a specification or a procurement determination;
- (b) a description of all remedies or relief requested; and
- (c) copies of all applicable supporting documentation.

Protests should be delivered to the Contact named in the RFP.

**Review and Final Determination**

Copies of all protests will be provided to the Assistant Director, Procurement of the Office of Budget and Management Analysis and appropriate program staff.

Protests shall be resolved through written correspondence, however, either the protester or DTF may request a meeting to discuss a formal protest, at which time the participants may present their concerns. Where further formal resolution is required, the Assistant Director, Procurement of the Office of Budget and Management Analysis may designate an alternate (“designee”) to determine and undertake the initial resolution or settlement of any protest.

The Program staff in conjunction with Contract Management Unit staff will conduct a review of the records involved in the protest, consult with the Assistant Director, Procurement of the Office of Budget and Management Analysis, and provide a memorandum to the Chief Financial Officer of the Office of Budget and Management Analysis summarizing the results of the review and recommendation. The Chief Financial Officer of the Office of Budget and Management Analysis will evaluate the recommendation, the material presented by the protester, and, if necessary, consult with appropriate senior level program staff, Counsel, and the Executive Deputy Commissioner, and prepare a written response to the protest.

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A copy of the decision, stating the reason(s) upon which it is based shall be sent to the protester or its agent within thirty (30) business days of receipt of the protest, except that upon notice to the protester such period may be extended. The protest determination should be recorded and included in the Procurement Record, or otherwise forwarded to OSC upon issue. The decision of the Chief Financial Officer of the Office of Budget and Management Analysis will be final.

**Reservation of Rights and Responsibilities of DTF**

DTF reserves the right to waive or extend the time requirements for protest submissions, decisions and appeals herein prescribed when, in its sole judgment, circumstances so warrant to serve the best interests of the State and DTF.

If DTF determines that there are compelling circumstances, including the need to proceed immediately with contract award in the best interest of the State, then these protest procedures may be suspended and such determination shall be documented in the procurement record.

DTF will consider all information relevant to the protest, and may, at its discretion, suspend, modify, or cancel the protested procurement action including solicitation of bids or withdraw the recommendation of contract award prior to issuance of a formal protest decision.

If a formal bid protest is received by DTF, a final determination on the protest must be made prior to OSC approval of the award under State Finance Law § 112. However, during the pendency of the protest, bid evaluation by DTF and subsequent OSC review of the recommended award may continue to progress at the discretion of the Chief Financial Officer of the Office of Budget and Management Analysis.

If a formal protest is received prior to a determination by DTF on a recommended award, notice of receipt of the protest must be given in the procurement record forwarded to OSC. If a final protest determination has been reached prior to transmittal to OSC, a copy of the final determination should be included in the Procurement Record and forwarded with the recommendation for award.

If a final protest determination is made after the transmittal of a bid package to OSC but prior to OSC approval under State Finance Law § 112, a copy of the final DTF determination shall be forwarded to OSC when issued, along with a letter either: a) confirming the original DTF recommendation for award and supporting the request for final State Finance Law § 112 approval, b) modifying the proposed award recommendation in part and supporting a request for final State Finance Law § 112 approval as modified; or c) withdrawing the original award recommendation.

All records related to formal bidder protests and appeals shall be retained for at least one (1) year following resolution of the protest. All other records concerning the procurement shall be retained according to the statutory requirements for records retention.

## **APPENDIX F - Funds Transfer Agreement**

As used herein the words “you”, “your” and “yours” refer to the customer named below (“Customer”). The words “we”, “us” and “our” refer to the bank indicated above. We operate a funds transfer service (“Service”) which enables depositors to transfer available funds from deposit accounts maintained with us to other accounts maintained with us or elsewhere. You have requested access to the Service. By signing this agreement (“Agreement”) you agree to all of the terms and conditions contained herein.

### **1. TRANSFER INSTRUCTIONS**

#### **A. Initiating Transfers**

Any of your authorized representatives (“Authorized Representative”) may instruct us to transfer funds from any of your designated accounts with us (an “Account”) to any other account with us or to an account at another bank through the Federal Reserve’s wire transfer system know as Fedwire or such other funds transfer system as we may reasonably select (“Funds Transfer System”) in accordance with the terms and conditions of this Agreement. Each Authorized Representative and Account is listed in Exhibit A attached hereto and hereby made a part hereof. Such an instruction (a “payment order” or “order”) may be received from you by telephone, in writing and, if you utilize our Customer Terminal Access Service, by means of a terminal connection with us.

#### **B. Executing Orders**

##### **i. General**

We will execute a payment order received from you only if it is received at the location designated by us from time to time and during our normal business hours on a day we are open. For purposes of this Agreement, we shall be deemed to have executed a payment order by and at the time of transmitting it to a Funds Transfer System or, in the case of an order to be credited to an account with us, upon crediting such account.

Except as provided in section 1B(iii) below, each payment order must include the following information in addition to any information required by us for Authorized Representative identification and security purposes: (a) the account number of the Account from which funds are to be withdrawn, (b) the amount and type of currency to be transferred, (c) the name of the beneficiary bank, and (d) the name and the account number of the beneficiary of the order and (e) the name and routing information of any intermediary bank through which funds are to be processed or transferred. You acknowledge and agree that, if your payment order describes the payee inconsistently by name and account number, payment of the order transmitted by us to the payee’s bank might be made by that bank on the basis of the account number even if it identifies a person different from the named beneficiary, and that your obligation to pay the amount of the order to us is not excused in such circumstances. We are not responsible for detecting any errors that may be contained in any payment order you send.

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We and you will comply with the security procedures referred to in and hereby made a part hereof. In addition to the security procedures, we may also, but shall not be obligated to, call back an Authorized Representative (other than the Authorized Representative from whom we purportedly received a payment order) in order to authenticate any order received. If we exercise that right, we shall have no obligation to execute the payment order received until such time as we are able to secure an authorization from such other Authorized Representatives. You understand and agree and you shall advise each authorized Representative that we may, at our option, record telephone conversations between an Authorized Representative and us.

Except as otherwise provided in the Account Agreement we are not obligated to execute, and shall reject, any payment order (a) which exceeds the amount of available funds on deposit with us in the Account designated in the order to be debited, (b) which is not in accordance with any condition required by you and agreed to in writing by us, or (c) which is not in accordance with any other requirement of this Agreement. Notwithstanding the foregoing sentence, we may, in our discretion, execute an order which fails to meet the requirements set forth in clause (a) of the preceding sentence.

**ii. Time of Execution**

Subject to the terms and conditions contained in this Agreement, unless the payment order specifies a later date, we will use reasonable efforts to execute a payment order received from you on the date the order is received, providing it is received before our wire transfer cut-off hour on a day we are open, and that day is also a day on which both the Federal Reserve Bank to which the order is to be transmitted by us and the payee bank are open for business. Subject to such terms and conditions, we will execute a payment order on a later day than the day of receipt of the order if (a) the payment order specifies such later day, (b) we, the applicable Federal Reserve Bank, and the payee bank are open for business on the specified later day, and (c) the later day selected is no more than five 5 business days after the payment order is received by us. If any of the foregoing requirements set forth in clauses (a) or (b) is not met, we will transmit the order on the next day on which all of those requirements can be met. We may handle payment orders received from you in any order convenient to us regardless of the order in which they are received.

For purposes of determining if receipt is prior to our wire transfer cut-off hour, a payment order shall be deemed received by us when the transmission to us and compliance with any related security procedure is completed.

**iii. Repetitive Orders**

We will provide you with a repeat code for each repetitive payment order (i.e., a payment order made on a recurring basis to the same payee and to the same account at the same payee bank) to be made to a payee, account and payee's bank identified in the attached hereto and hereby made a part hereof. A repetitive payment order must include the following information in addition to any information required by us for Authorized Representative identification and security purposes: (a)

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a repeat code and (b) the amount to be transferred. If a payment order does not contain a repeat code, we will treat the order as a non-repetitive transfer, and require the information set forth in section 1B(i) above before executing the order. If you use a wrong repeat code, we are not obligated to execute the payment order, but if we execute such a payment order, you shall be obligated to pay the amount of the order as provided herein.

**iv. Cancellation and Amendment**

You may request that we attempt to cancel or amend a payment order previously received from you. Any such request shall comply with the security procedures applicable to the related payment order.

We shall use reasonable efforts to act on a request for cancellation or amendment received prior to execution of the related payment order by us. We will transmit to the payee's bank a request for cancellation or amendment of a payment order received after execution of the related payment order by us, but shall have no liability for failure to effect such cancellation or amendment. You agree to indemnify us against any loss, liability or expense (including attorney's fees and expenses) incurred by us as a result of such cancellation or amendment or attempted cancellation or amendment pursuant to your request.

Notwithstanding any provision to the contrary contained herein, cancellation of an order upon your request will relieve us of any further obligation to act with respect to such order.

**v. Notice of Rejection or Return**

We will notify you promptly of any rejection of a payment order by us and of any return of a payment order transmitted by us under this Agreement. Upon such notification, we shall have no further obligation to act with respect to such order provided, in the case of rejection of an order, we have acted in accordance with the terms of this Agreement.

**C. Payment; Authorization to Charge Account; No Extension of Credit**

You agree to pay us the amount of each payment order on the day we execute that order. We may, without prior notice or demand, debit the Account designated in the order as the Account from which funds are to be withdrawn, or the appropriate Account in the case of repetitive orders. We will credit the Account previously debited in the amount of any final settlement received by us by reason of return, cancellation or amendment of a payment order executed by us. Such credit shall be made as of the day of such receipt by us.

You will at all times use best efforts to maintain a balance of available funds in the Account sufficient to cover your payment obligations under this agreement.

Except as otherwise provided in Account Agreement, nothing in this Agreement nor any course of dealing between you and us constitutes a commitment or obligation on our part to lend money to you

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or to extend any credit or make a loan to you or to otherwise advance funds to you to pay for any payment order.

**D. Confirmation; Account Reconciliation**

At your request, we will send you a written confirmation advice of each payment order executed by us to the address indicated on Exhibit A. We will assign a reference number to each executed payment order. This number will appear on the confirmation advice or periodic account statement. If you utilize our Customer Terminal Access Service option, you may elect to print out of your terminal a record of the payment order. Payment orders executed by us will be reflected on your periodic account statement issued by us. You agree to notify us immediately of any discrepancy between your records and any confirmation advice or periodic account statement.

**E. Authorization**

Access to the Service, including any option feature(s) you determine to utilize, will be permitted after you sign this Agreement and return it to us at the address set forth in Exhibit A, together with the applicable Exhibits.

**F. Security Codes**

If a Personal Identification Number ("PIN") is a part of the security procedures referred to in Exhibit C, we will assign a unique PIN for each Authorized Representative designated in Exhibit A and advise you of each such PIN assigned.

You shall be responsible for the security of each such PIN and any other code used under this Agreement and for their unauthorized use. You agree to keep each such PIN and code confidential and to disclose them only to such individuals who are required to know them. Each PIN shall be disclosed by you only to the Authorized Representative to whom it is issued. You shall instruct each Authorized Representative that such PINs and codes shall not be disclosed to anyone else, and shall establish and maintain procedures reasonably adapted to assure the confidentiality of such PINs and codes. If at any time you believe that any such PIN or code has become known by some unauthorized person (whether or not employed by you), you shall notify us immediately by telephone and confirm that notification in writing. Upon receipt of such telephone notice we shall issue a new PIN and code in substitution and we shall no longer act on instructions containing the PIN(s) and/or code(s) identified in such notice. We reserve the right to change any PIN or code at any time upon notice to you. You shall notify us immediately by telephone and confirm to us in writing, if you terminate the authority of any Authorized Representative. Upon receipt of your telephone notification, we shall no longer act on instructions received from the person identified in such notice.

**2. COMPENSATION**

To the extent provided by law, if you suffer any loss of interest resulting from our error in executing a payment order, or from our failure to execute a payment order, in accordance with the terms of this

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Agreement, we will reimburse you for such loss to the extent provided herein, provided that you have complied with the terms and conditions of this Agreement, and provided further, that such error or failure was due to causes within our control. Such compensation shall be limited to the interest lost for a period not to exceed ninety (90) days following the receipt by you of the confirmation advice, terminal print-out, or periodic account statement (whichever occurs first), and shall be calculated by using a rate equal to the effective Federal funds rate at the Federal Reserve Bank of New York for the period involved. At our option, compensation will be paid either by credit to an Account or by check. No such compensation shall be paid if the payment order was received from an agent or employee of New York State purporting to be to be an Authorized Representative and we executed the order in good faith and in compliance with our security procedures.

**3. CHANGES**

From time to time you may change (a) accounts from which payment orders may be made, (b) Authorized Representatives and (c) any other information contained in any exhibit to this Agreement by notice to us signed by an authorized signer on the applicable Account(s). Such changes shall be made promptly after we receive notice of a change from you or such later date as may be stated in your notice to us.

From time to time we may change any of the terms and conditions contained in this Agreement, including without limitation, our business hours or any cut-off hour, provided herein. Non-material changes will become effective on the second business day after the day upon which you receive notice or such later date as may be stated in our notice to you. It is understood that no material change, including but not limited to any change in prospective liability of either party for any action governed by this Agreement or any change that purports to modify in any respect the application of Article 4A of the Uniform Commercial Code to this Agreement or to actions taken pursuant to this Agreement, shall take effect without your prior written consent.

**4. LIABILITY; LIMITATIONS ON LIABILITY; INDEMNITY**

We shall be responsible only for performing the Service as expressly provided in this Agreement, and shall be liable only for our negligence or lack of good faith in performing the Service. We shall not be responsible for your acts or omissions (including the amount, accuracy, timeliness of transmittal, or due authorization with respect to any payment order received from you), those of any other person, including without limitation, any Federal Reserve Bank or transmission or communications facility, any payee or payee bank (including without limitation the rejection of a payment order by such payee or payee bank), or any other bank, and no such person shall be deemed our agent. Except as otherwise expressly provided herein, we shall not be required to act upon any instruction received from you to any other person, or to provide any notice or advice to you or any other person with respect to any matter.

Without limiting the generality of the foregoing provisions, we shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission or communication facilities, equipment failure, war, emergency conditions or other circumstances beyond our control. In addition, we shall be excused from failing to execute or delay in executing a payment order if such execution would result in our having exceeded any limitation upon our intraday net funds position (sender net debit

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cap) established pursuant to Federal Reserve guidelines or otherwise in violation of any provision of the Federal Reserve large-dollar risk control program.

We shall be entitled to rely on any notice or other writing reasonably believed by us in good faith to be genuine and correct and to have been signed by the person purporting to have signed such notice or other writing.

If a payment order received by us was sent by an Authorized Representative or an agent or employee of New York State purporting to be an Authorized Representative, it will be deemed effective as your order and you shall be obligated to pay the amount of the order as provided herein whether or not the order was authorized by you if we executed the order in good faith and in compliance with the security procedures you selected. If a payment order received by us was authorized by you, you shall be obligated to pay the amount of the order as provided herein, whether or not we complied with the security procedures you selected whether or not that order was erroneous in any respect or that error would have been detected had we complied with such procedures.

**5. ADDITIONAL TERMS AND CONDITIONS**

**A. Fees**

Fees for the Service shall be in accordance with the schedules agreed to between the bank and the State.

**B. No Waiver**

Except for changes made in accordance with this Agreement, no deviation, whether intentional or unintentional, shall constitute a change hereto, and no such deviation shall constitute a waiver of any right or duty of either party hereto.

**C. Account Agreements**

The terms and conditions of your applicable Account agreement(s) are hereby incorporated by reference into this Agreement. If any inconsistency exists between such agreement(s) and this Agreement, this Agreement shall control to the extent of such inconsistency.

**D. Incoming Transfers**

If you so request, we will use reasonable efforts to notify you of incoming funds transfers within a reasonable time following receipt thereof. However, we shall have no liability for failure to give such notice.

**E. Notices**

Unless otherwise stated in this Agreement, all notices and advices sent by you in connection with this Agreement shall be in writing, signed by duly authorized signer(s) on the applicable Account(s) and sent by register or certified U.S. mail, hand delivery, or an express carrier. Notices or advices to you will be sent, by first class mail or any other means, to your address as indicated unless another address is



substituted by notice delivered or sent as provided herein. Notices or advices to us will be sent to our address as indicated on.

**F. Termination**

You may terminate your use of the Service and this Agreement at any time. Such termination shall be effective on the second day on which we are open following the day of our receipt of such notice. We reserve the right to terminate the Service, or any part thereof, of this Agreement immediately upon notice to you. Any termination shall not affect any of our obligation or your obligations arising prior to such termination.

**G. Entire Agreement**

This Agreement is the complete and exclusive statement of the agreement between us and you with respect to the subject matter hereof and supersedes any prior agreement(s) between us and you with respect to such subject matter. There are no promises, agreements, conditions, undertakings, warranties or representations, either oral or written, express or implied, between us and you other than set forth in this Agreement. In the event any statute, regulation or government policy, to which we are subject, and which governs or affects the transactions contemplated by this Agreement including without limitation the Federal Reserve's large-dollar risk control policy, would invalidate or modify any portion of this Agreement, then the Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy, and we shall incur no liability to you as a result of our having to comply with such statute or regulation.

**H. Severability of Provisions**

If any part of this Agreement shall be held to be void or unenforceable, such part shall be treated as severable, leaving valid the remainder of this Agreement, notwithstanding the part found to be void or unenforceable.

**I. Non-Assignment**

This Agreement constitutes a contract for personal services between you and us. Neither party may assign this Agreement or any of the rights or duties hereunder to any person without prior written consent from both parties except the Bank may assign any of its rights or delegate any of its duties in whole or in part to any Affiliate.

**J. Binding Agreement**

This Agreement is and shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

**K. Governing Law**

This Agreement shall be governed by the laws of the State of New York.

**L. Miscellaneous**

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Notwithstanding anything in this Agreement, including any document referred to herein or attached hereto, to the contrary:

- (i) all transactions shall be governed by Article 4-A of the New York Uniform Commercial Code (hereinafter "Article 4-A") and to the extent that there is any inconsistency between Article 4-A and this Agreement, the provisions of Article 4-A shall govern;
- (ii) you accept no liability for negligence or willful misconduct on our part or for the unexplained loss of funds by us, and you will neither indemnify us for losses arising out of our negligence or willful misconduct nor agree not to seek compensation for damages resulting from our negligence or willful misconduct;
- (iii) Except as set forth in Section 1 B (iv) above, you will not indemnify us for any damages above and beyond the extent required of you by law;
- (iv) We may not debit any account maintained by you for any purpose without specific written or electronic authorization from you;
- (v) we and our officers, employees and agents shall act reasonably and in good faith with respect to all transactions; and
- (vi) We acknowledge that you are not in a position to determine whether the security procedures offered by us are "commercially reasonable" within the meaning of Section 4 A 202 of the New York Uniform Commercial Code and any determination regarding the reasonableness of such procedures shall be made pursuant to that section and the effectiveness of any unauthorized payment orders shall be governed by the provisions of Article 4 A..
- (vii) The State agrees that it shall be solely responsible for ensuring that all security procedures are followed and that the Bank shall have no liability for any losses sustained by the State as a result of a breach of security procedures if the Bank has adhered to its security procedures. If such procedures are violated, the State agrees to promptly notify the Bank of any such breach. The State acknowledges that it has reviewed the applicable security procedures and agrees with the security procedures and any security procedures it may select in the future.

**FOR US**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**FOR YOU**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Bank: \_\_\_\_\_

**Appendix G – Change Procedure**

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  - Technical Terms Negotiation
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Attachment 1

New York State Department of Taxation and Finance Change Analysis

Attachment 2

New York State Department of Taxation and Finance Change Request

Module 2 – Debit Cards

Change Process

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**B. Change Category**

			Maintenance	Enhancement
Information Services (1) (components include: computer and end-user hardware, Proprietary Software, Licensed Software, data communications, etc.)	Transaction , Report, etc., (2)	N/A	Changes necessary to achieve existing Performance Standards.	Change impacts captured data elements for program transactions, returns/payment document and file formats or new transaction or report.
	Standards and Requirements (2)	Existing	Changes necessary to achieve existing Performance Standard.	N/A
		Modified	Changes necessary to implement modified Performance Standard where modification is initiated by Contractor and approved by the Department.	Changes necessary to implement modified Performance Standard initiated by the Department.
		New	N/A	Changes necessary to implement new Performance Standard.
	Program Software (2)		All changes to Program software necessary to achieve existing Performance Standards or modifications initiated by Contractor and approved by the Department.  Changes necessitated by modifications to Licensed Software.	All changes to Program software to support the capture of new data fields or new business functionality.
	Reporting (2)	Existing Reports	Development and implementation of modifications to existing reports when initiated by Contractor with Department approval.	Significant changes to existing reports initiated by the Department.
		New Reports	N/A	Development and implementation of a new report or inquiry created from either existing or newly captured data elements.
Business Functionality (2)	New	N/A	New business functionality.	
Program Support Plans (includes	Standards	Existing	Changes necessary to achieve an existing Performance	N/A

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Program Support Plans and execution of those Plans)			Standard.	
		Modified	Changes necessary to implement a modified Performance Standard where the modification is initiated by the Department, or by Contractor and approved by the Department.	N/A
		New	N/A	Changes necessary to implement a new Performance Standard to existing Contractor Program Support Plans used in support of the Program.
	Information Services		Program Support Plan changes driven by Information Services maintenance activities.	N/A
	Business Functionality	Existing	Changes necessary to achieve an existing Performance Standard to existing Contractor Program Support Plans used in support of the Program.	N/A
		New	N/A	Changes necessary to implement a new Performance Standard.

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**B. Change Control Procedure**

	Maintenance	Enhancement
<p>Change Request (CR)  (Exhibit D, contains CR form)</p>	<p>Department Change Control Representative (CCR) submits CR (form included in Exhibit D), including the following:</p> <ul style="list-style-type: none"> <li>▪ Program</li> <li>▪ Change environment (Information Services, Program Support)</li> <li>▪ Preliminary determination of change category (Maintenance or Enhancement) and supporting information (i.e. number of data fields)</li> <li>▪ Priority of change, within outstanding change requests</li> <li>▪ Description of current process/ system(s) affected</li> <li>▪ System(s)/plan(s) affected</li> <li>▪ Description of required change</li> <li>▪ Condition necessitating change (e.g., legislative mandate, production problem, audit/monitoring results, etc.)</li> <li>▪ Suggested implementation strategy/ approach</li> <li>▪ required implementation date</li> <li>▪ date by which change analysis required (2 weeks from the date CR is sent to contractor, if contractor requires more than 2 weeks to prepare CA, the contractor and the Department will negotiate a mutually agreed upon date)</li> <li>▪ list of attachments</li> <li>▪ primary Department contact, if different from CCR</li> </ul> <p>Source documents are appended to CR as needed and provided to the Revenue Services Bureau.</p> <p><i>NOTE:</i> Department prepares Change Request for all changes. Where Contractor desired to initiate a change, Contractor contacts appropriate Department CCR for information discussion and, upon agreement, Department</p>	<p>(same as Maintenance.)</p>

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	CCR prepares and submits CR. If the Department does not agree with a proposed change it will provide in writing the basis for the decision, Contractor shall not proceed with the change. Any preliminary analysis completed as part of these information discussions shall be included in the Change Request documentation.	
Analysis of Implementation Alternatives	N/A	Upon receipt of CR, Contractor initiates discussion with Department CCR to identify alternatives and determine suggested implementation approach.
Change Analysis (CA)  (Exhibit E, contains CA form)	<p>Contractor completes CA, (form included in Exhibit E) including:</p> <ul style="list-style-type: none"> <li>▪ Indication of agreement with Department’s preliminary determination of change category. If not in agreement, initiate negotiation with Department CCR.</li> <li>▪ Recommend implementation approach</li> <li>▪ Development and implementation time frames</li> <li>▪ Impact on other systems/plans</li> <li>▪ Department dependencies</li> <li>▪ Impact on fees, if any (all proposed fees subject to Fee Change Procedure)</li> </ul> <p>Change analysis sent to Department CCR on or before the CA required date.</p>	<p>Contractor completes CA, (form included in Exhibit E) including:</p> <ul style="list-style-type: none"> <li>▪ Program</li> <li>▪ Change environment (Information Services, Program Support)</li> <li>▪ Indication of agreement with Department’s preliminary determination of change category <ul style="list-style-type: none"> <li>○ If not in agreement, initiate negotiation with Department CCR</li> </ul> </li> <li>▪ Recommended implementation approach</li> <li>▪ Development and implementation time frames</li> <li>▪ Impacts on other systems/plans</li> <li>▪ Resource requirements (staff, by staff category, equipment, facilities) (required for enhancement but not required for maintenance)</li> <li>▪ Additional required enhancement information</li> <li>▪ Department dependencies</li> <li>▪ Proposed fees (development and operations, if any) (all proposed fees subject to Fee Change Procedure)</li> </ul> <p>Change Analysis sent to: Revenue Services Bureau on or before the CA required date.</p>
Technical Terms Negotiation	<p>Department and Contractor CCR’s <b>(3)</b> negotiate and document technical details;</p> <p>CCR’s sign off</p>	<p>Department and Contractor CCR’s <b>(3)</b> negotiate and document technical details;</p> <ul style="list-style-type: none"> <li>▪ All CCR’s sign off;</li> <li>▪ Copy of approved CA to Revenue Services Bureau; and</li> </ul>

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		<ul style="list-style-type: none"> <li>▪ Department and Contractor sign off on CA</li> </ul>
Approvals	The State has final approval for all changes to the Program, regardless of the party initiating the change. The Department has final approval for all changes to the Program defined herein.	(Same as Maintenance.)
Fee Negotiation	N/A	Revenue Services Bureau negotiates final development and/or operations fees per Fee Change Procedure (see Section C below).
Development/ Implementation	<p>Upon sign off of Change Analysis, development and implementation commences in accordance with an accepted system development methodology.</p> <p>PRIOR TO IMPLEMENTATION, Contractor updates all related documentation in accordance with the Performance Standards.</p> <p>Department may require that development/ implementation of legislatively mandated enhancements proceed prior to agreement of fee change or agreement to any other Agreement element subject to renegotiation.</p>	(Same as Maintenance.)
Update Administrative Documentation	<p>CCR's maintain files of Change Plans (CR, CA and all related documents).</p> <p>CR, CA and any attachments and other related documents become official documentation.</p>	<p>Revenue Services Bureau and CCR's maintain files of Change Plans (CR, CA and all related documents).</p> <p>CR, CA and any attachments and other related documents become official documentation.</p>



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**C. Fee Change Procedure**

	Maintenance	Enhancement
Contractor Submits Fee Request Package to Director, Revenue Services Bureau	<p>Change request package must include:</p> <ul style="list-style-type: none"> <li>▪ Identification of factor(s) necessitating fee change, including, as applicable, Change Control number, and/or statement of change in cost of providing Services or extraordinary circumstances.</li> <li>▪ For development fees (for Enhancement, as applicable): <ul style="list-style-type: none"> <li>○ Development/Implementation functions/tasks, including systems development, testing, etc.</li> <li>○ For each function/task, estimated resource requirements (staff, equipment, facilities, etc). (Resources will correspond with resource requirements in Change Analysis.)</li> <li>○ Cost of required resources by function/task and total cost.</li> </ul> </li> <li>▪ For changes to existing operations fees, as applicable: <ul style="list-style-type: none"> <li>○ Current transaction fee for relevant Transaction or Report</li> <li>○ Proposed change to current fee, by function(s) and total</li> <li>○ How proposed fee is justified</li> </ul> </li> <li>▪ The analysis must indicate the current and new level of resources and the current and new workload volumes supported by those resources.</li> <li>▪ CPI-U Index for relevant period.</li> <li>▪ Requested effective date, guaranteed duration of proposed fee, and guarantee of CPI-U cap percentage increases.</li> </ul>	(Same as Maintenance.)
	<p>For new operations fees the change request package must also include:</p> <ul style="list-style-type: none"> <li>▪ Proposed transaction fee; both total and by function</li> <li>▪ All documentation and cost analysis as stated above</li> <li>▪ Requested effective date, guaranteed</li> </ul>	(Same as Maintenance.)

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	<p>duration of proposed fee schedule, and guarantee of CPI-U cap</p> <p>For proposed changes to operations fees to be accepted for review by the Department, the analysis must indicate a material change in the cost of providing Services. The Department reserves the right to require from Contractor information needed to validate any changed costs subsequent to fee approval.</p>	
Department Reviews Request	<p>Department (Revenue Services Bureau) reviews fee request, distributes internally as needed, makes recommendation to approval/disapprove.</p> <p>Department may request additional information from Contractor and negotiate modifications, as needed.</p> <p>Revenue Services Bureau obtains approval from Director of the Procurement Bureau.</p>	(Same as Maintenance.)
Control Agency Approval	N/A	Department obtains approval from OSC, and DOB is necessary.
Notify Contractor	Department notifies Contractor in writing of final fee approval.	(Same as Maintenance.)
Department Initiates Agreement Amendment (see Section D below)	N/A	Agreement Amendment required when fee exceeds 10% of annual operating costs.
Implement New Fee Structure	OSC implements new fee structure. <b>(4)</b>	Department obtains approval from OSC.

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**D. Agreement Amendment**

	Maintenance	Enhancement
Amend Agreement	N/A	Agreement amendment required to amend Program requirements <u>and</u> fee changes associated with Program Enhancements. <b>(4)</b>  Revenue Services Bureau shall review Enhancement process and documentation and initiate Agreement amendments, if required.
Control Agency Approval	N/A	OSC Contract Unit and Attorney General approval contract amendment, if required.

**NOTES:**

- (1) Maintenance and Enhancements for Information Services will be defined in the subsequent contract.**
- (2) Changes to Standards, Program Software, Program Management and business functionality may impact any component of Information Services.**
- (3) Communications Matrix will be defined in the subsequent contract and will identify the CCR for the Department. Appropriate CCR(s) involved in process, including sign-off, as dictated by nature of enhancement. For an Enhancement, all CCR's must sign off on final technical details.**
- (4) If fee change implemented after approved effective date, compensation shall be retroactive to approved effective date.**

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**Change Analyses**

<b>CHANGE ENVIRONMENT:</b>  <input type="checkbox"/> Information Systems; <input type="checkbox"/> Operations; or, <input type="checkbox"/> Other	<b>CHANGE CATEGORY:</b>  <input type="checkbox"/> Maintenance <input type="checkbox"/> Enhancement; or <input type="checkbox"/> Fee	<b>CONTRACT:</b>  Number: Tax Type: Fiscal Year: Lifetime Sequence Number:	<b>PRIORITY:</b>  <input type="checkbox"/> High <input type="checkbox"/> Medium <input type="checkbox"/> Low
---	---	--	--

- I. RECOMMENDED IMPLEMENTATION APPROACH:
- II. DEVELOPMENT/IMPLEMENTATION TIMEFRAMES:
- III. IMPACTS ON OTHER SYSTEMS/PLANS:
- IV. RESOURCE REQUIREMENTS (NOT REQUIRED for Maintenance Change)
- V. ADDITIONAL INFORMATION REQUIRED FOR ENHANCEMENT , attach following required information:

For Information Services Change: <input type="checkbox"/> Design Specifications <input type="checkbox"/> Schedule of Deliverables	For Operations Change: <input type="checkbox"/> Workflow
--	---

VI. DEPARTMENT DEPENDENCIES:

VII. APPLICABLE CONTRACT REFERENCE:

VIII. PROPOSED FEES (Attach additional documentation, if necessary):

One-Time Development:

Task Breakdown

- Project Management/Analysis/Design      0 hours
- Development                                      0 hours
- Testing    0 hours
- Total Hours                                        0 hours

Operational/On Going Cost:

IX. APPROVALS/CONTACTS:

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A.	<u>Selected Bidder</u> CHANGE CONTROL REPRESENTATIVE (CCR) NAME:		
	SIGNATURE:	DATE	
	OFFICE:	PHONE:	FAX:
B.	DTF APPROVAL OF ANALYSIS: -		
	CHANGE CONTROL REPRESENTATIVE (CCR) NAME:		
	SIGNATURE:	DATE:	
	OFFICE:	PHONE:	FAX:
	PROGRAM AREA APPROVAL - NAME:		
	SIGNATURE:	DATE:	

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**Change Request**

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Change Request

<b>Change Environment:</b> <input type="radio"/> Information Services; <input type="radio"/> Program Support; or, <input type="radio"/> Other	<b>Change Category:</b> <input type="radio"/> Maintenance; <input type="checkbox"/> Minor <input type="checkbox"/> Major <input type="radio"/> Enhancement; or, <input type="radio"/> Fee	Contract #: <input style="width: 50px;" type="text"/> Tax Type: <input style="width: 50px;" type="text"/> Fiscal Year: <input style="width: 50px;" type="text"/> Change Control #: <input style="width: 50px;" type="text"/>	<b>Priority:</b> <input type="radio"/> High <input type="radio"/> Medium <input type="radio"/> Low
For Information Services Change	<input type="radio"/> Existing Return <input type="radio"/> New Return or Form <input type="radio"/> New Report or Report Change <input type="radio"/> New Method of Filing Option <input type="radio"/> New Method of Data Delivery <input type="radio"/> Other		
<b>I. Description of Current Process:</b> <div style="border: 1px solid black; height: 30px; width: 100%;"></div>			
System(s)/Plan(s) Affected: <input style="width: 80%;" type="text"/>			
<b>II. Description of Change Requested:</b> <div style="border: 1px solid black; height: 60px; width: 100%;"></div>			
<b>III. Why Needed:</b> <div style="border: 1px solid black; height: 30px; width: 100%;"></div>			
<b>IV. Suggested Implementation Approach:</b> <div style="border: 1px solid black; height: 30px; width: 100%;"></div>			
<b>V. Required Implementation Date:</b> <input type="text"/> / <input type="text"/> / <input type="text"/>		<b>VI. Date Change Analysis Due:</b> <input type="text"/> / <input type="text"/> / <input type="text"/>	
<b>VII. Attachments</b> <input style="width: 80%;" type="text"/>			
<b>VIII. Approvals/Contacts</b>			
<b>A. Change Control Manager:</b> _____			
Signature: _____		Signature Date: <input type="text"/> / <input type="text"/> / <input type="text"/>	
<b>Office:</b> <input style="width: 80%;" type="text"/> Revenue Services Bureau		Phone: (    ) <input type="text"/> - <input type="text"/> Fax: (    ) <input type="text"/> - <input type="text"/>	
<b>Contact Person:</b> <input style="width: 80%;" type="text"/>		Phone: (    ) <input type="text"/> - <input type="text"/> Fax: (    ) <input type="text"/> - <input type="text"/>	
<b>B. Program Area Manager:</b> _____			
Signature: _____		Signature Date: <input type="text"/> / <input type="text"/> / <input type="text"/>	
<b>Office:</b> <input style="width: 80%;" type="text"/>		Phone: (    ) <input type="text"/> - <input type="text"/> Fax: (    ) <input type="text"/> - <input type="text"/>	
<b>Program Area Contact Person:</b> <input style="width: 80%;" type="text"/>		Phone: (    ) <input type="text"/> - <input type="text"/> Fax: (    ) <input type="text"/> - <input type="text"/>	

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**Module 2 Change Process:**

1. Contract Update

Bidders must agree to the Contract Update process and requirements.

**(1) TYPES OF CONTRACT UPDATES:** In order to expedite processing of a change request, where proposed changes involve more than one category below, they should be submitted to OGS as totally separate requests.

	<b>OGS Approval Required</b>	<b>OSC Pre-Approval Required</b>
Auto Add	Yes	Post Approval only
<ul style="list-style-type: none"> <li>- Price Reductions</li> <li>- Price Adjustments based on approved contract formula.</li> </ul>		
Regular Add	Yes	Yes
<ul style="list-style-type: none"> <li>- Re-bundled Product or Services</li> <li>- New Product or Services within contract scope.</li> </ul>		
Special Add	Yes	Yes
<ul style="list-style-type: none"> <li>- other situations not covered above, still within contract scope</li> </ul>		

For additional information see below.

Regular and Auto Adds shall be filed with Office of General Services (OGS) as outlined below. Contractor shall update their website (if applicable) to reflect Regular and Auto Adds changes ONLY after receiving OGS approval notification and if required, the Office of the State Comptroller (OSC) approval notification.

The following guidelines are subject to change at the discretion of OGS.

A. COVER LETTERS:

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Contractor must briefly describe the nature and purpose of the update. The cover letters must contain original signatures of an individual authorized to sign on behalf of Contractor, and an original corporate acknowledgment. In addition, the contract update must be accompanied by three (3) signed original update forms.

**B. TYPES OF CONTRACT UPDATES:**

In order to expedite processing of a change request, where proposed changes involve more than one category below (*Auto Add / Regular Add*), they should be submitted to OGS as separate requests.

**1) AUTO ADDS / DELETIONS:**

“Auto Adds/Deletions” are Contract changes and updates made in accordance with the previously approved Contract pricing formula. Price increases not fitting the above categories must be submitted as a Regular Add.

Auto Adds/Deletions include:

- i. Adding new Products / Services within the established, previously approved pricing structure, (discounts cannot be reduced).
- ii. Lowering pricing for Products / Services previously incorporated under the Contract,
- iii. Deleting Products / Services previously incorporated under the Contract and

Notice: For categories (i), (ii), and (iii) above Auto Adds: OGS will review the request and notify the Contractor if any of the Adds/Deletions are beyond the scope of the Contract. Contractor should note that all Auto Adds/Deletions must be approved by OGS and are subject to a post audit by OSC.

**2) REGULAR ADD:**

“Regular Adds” are requests for:

Addition of new Products / Services to the Contract within the scope of the Contract, which do not fall under the previously established price structure or discounts for Products / Services types previously approved under the Contract.

Regular Adds must be submitted to OGS for prior approval and must be accompanied by a justification of reasonableness of price. Regular Adds are subject to pre-audit by the Comptroller. If approved, OGS staff will notify Contractor in writing.

**C. PRICE JUSTIFICATION FORMAT:**



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Contractor is required to submit the Products / Services and price information for the update in a spreadsheet format in hard copy and on an electronic media or via e-mail to the OGS Purchasing Officer. The list must be dated and the format should be consistent with the format of the price list(s) included in the NYS Net Price List of this Contract. The price list should separately include and identify (e.g., by use of separate worksheets or by using italics, bold and/or color fonts):

- Products / Services being added

D. SUPPORTING DOCUMENTATION:

Each update request must include the current U.S. commercial price list relevant to the Products / Services included in the update. If the NYS Net Prices are based on a GSA Schedule, the current GSA Schedule must also be included with the update request.

E. CONTRACTOR'S SUBMISSION OF CONTRACT UPDATES:

In connection with any Contract update, OGS reserves the right to:

- request additional information
- reject Contract updates
- remove Products / Services from Contracts
- remove Products / Services from Contract updates
- request additional discounts for new or existing Products / Services

**APPENDIX H - Agreement to Adhere to the Secrecy Provisions of the Tax Law and the Internal Revenue code (DTF-202)** **DTF-202 (3/00)**

**New York State Department of Taxation and Finance  
Agreement to Adhere to the Secrecy Provisions of the Tax Law  
and the Internal Revenue Code**

The New York State Tax Law and the Department of Taxation and Finance impose secrecy restrictions on:

- all officers, employees, and agents of the Department of Taxation and Finance;
- any person engaged or retained by this department on an independent contract basis;
- any depository, its officers and employees, to which a return may be delivered;
- any person who is permitted to inspect any report or return;
- contractors and workmen hired by the department to work on its equipment, buildings, or premises, or to process returns or other papers; and
- visitors to the department's buildings or premises.

Except in accordance with proper judicial order or as otherwise provided by law, it is unlawful for anyone to divulge or make known in any manner the contents or any particulars set forth or disclosed in any report or return required under the Tax Law. Computer files and their contents are covered by the same standards and secrecy provisions of the Tax Law and Internal Revenue Code that apply to physical documents.

Any unlawful disclosure of information is punishable by a fine not exceeding \$10,000, imprisonment not exceeding one year, or both. State officers and employees making unlawful disclosures are subject to dismissal from public office for a period of five years.

Unauthorized disclosure of automated tax systems information developed by the department is strictly prohibited. Examples of confidential systems information include: functional, technical, and detailed systems design; systems architecture; automated analysis techniques; systems analysis and development methodology; audit selection methodologies; and proprietary vendor products such as software packages.

The Internal Revenue Code contains secrecy provisions which apply to federal tax reports and returns. Pursuant to sections 6103 and 7213 of the Internal Revenue Code, penalties similar to those in the New York State law are imposed on any person making an unauthorized disclosure of federal tax information. In addition, section 7213A of the Internal Revenue Code was enacted to prohibit the unauthorized inspection of returns or return information (also known as "browsing"). The unauthorized inspection of returns or return information by state employees is punishable by a fine not exceeding \$1000 for each access, or by imprisonment of not more than one (1) year, or both, together with the cost of prosecution.

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I certify that I have read the above document and that I have been advised of the statutory and Department of Taxation and Finance secrecy requirements; I certify that I will adhere thereto, even after my relationship with the department is terminated.

Organization: \_\_\_\_\_  
Signature \_\_\_\_\_ Date \_\_\_\_\_  
Name: \_\_\_\_\_ Social security number: \_\_\_\_\_  
Address Street: \_\_\_\_\_  
City: \_\_\_\_\_ State \_\_\_\_\_ ZIP code \_\_\_\_\_

**APPENDIX I - Acknowledgement of Confidentiality of Internal Revenue Service Tax Return Information**

**CONTRACTOR NAME:** \_\_\_\_\_

**ACKNOWLEDGMENT OF CONFIDENTIALITY OF INTERNAL  
REVENUE SERVICE TAX RETURN INFORMATION**

I \_\_\_\_\_, hereby acknowledge that I have read the quoted provisions of sections 6103, 7213, 7213A and 7431 of the Internal Revenue Code (IRC) which are attached to this acknowledgment and I understand that IRC section 6103 imposes strict confidentiality requirements on current and former officers and employees of the Contractor who have or have had access to Federal tax returns or return information. I understand that sections 7213, 7213A and 7431 of the IRC impose civil and criminal penalties for unauthorized inspection or disclosure of any tax return or return information. I further understand that:

1. All Federal tax returns and return information disclosed to the Contractor are confidential pursuant to IRC section 6103(a), and may not be disclosed by any current or former officer or employee of The Contractor except as authorized by the IRC;
2. All tax returns or return information disclosed to the Contractor may be used only for permissible purposes as outlined in IRC section 6103(n);
3. Willful unauthorized inspection or disclosure of tax returns or return information by a current or former officer or employee of the Contractor is prohibited under the terms of IRC sections 7213(a)(1) and 7213(A)(a)(1). Willful unauthorized disclosure of a tax return or return information is punishable as a felony by a fine in any amount not exceeding \$5,000, imprisonment of not more than five years, or both, together with the costs of prosecution. Willful unauthorized inspection of a tax return or return information is punishable by a fine of up to \$1,000 and/or imprisonment of up to one year, together with the costs of prosecution;
4. Under the terms of IRC section 7431(a)(2), a taxpayer may bring a civil lawsuit to recover damages from an officer or employee of the Contractor who has disclosed, knowingly or by reason of negligence, such taxpayer's tax return or return information in violation of any provision of IRC section 6103; and
5. The civil and criminal penalty provisions apply even if the unauthorized disclosures were made after employment has ceased with the Contractor

Additionally, I acknowledge and understand that violation of these requirements of confidentiality could result in disciplinary action, including termination of employment.

SIGNED: \_\_\_\_\_

DATE: \_\_\_\_\_

**INTERNAL REVENUE CODE**

**SELECTED CONFIDENTIALITY PROVISIONS**

**PERTAINING TO CONTRACTORS**

**Internal Revenue Code (IRC) Section 6103 imposes strict confidentiality requirements on contractors and their employees who have access to Federal tax returns or return information.**

**Section 6103, CONFIDENTIALITY AND DISCLOSURE OF RETURNS AND RETURN INFORMATION, provides *in part*:**

(a) GENERAL RULE - Returns and return information shall be confidential, and except as authorized by this title –

(1) no other person (or officer or employee thereof) who has or had access to returns or return information under subsection (n), shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section. For purposes of this subsection, the term "officer or employee" includes a former officer or employee.

(2) CERTAIN OTHER PERSONS – Pursuant to regulations prescribed by the Secretary, returns and return information may be disclosed to any person, including any person described in section 7513(a), to the extent necessary in connection with the processing, storage, transmission, and reproduction of such returns and return information, the programming, maintenance, repair, testing, and procurement of equipment, and the providing of other services, for purposes of tax administration.

**IRC Sections 7213, 7213A, and 7431 impose criminal and civil penalties for unauthorized disclosure or inspection of any tax return or return information.**

**Section 7213, UNAUTHORIZED DISCLOSURE OF INFORMATION, provides *in part*:**

(a) RETURNS AND RETURN INFORMATION -

(1) FEDERAL EMPLOYEES AND OTHER PERSONS. - It shall be unlawful for any officer or employee of the United States or any person described in section 6103(n) (or an officer or employee of any such person), or any former officer or employee, willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b)). Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution...

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(2) STATE AND OTHER EMPLOYEES - It shall be unlawful for any person (not described in paragraph (1)) willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103 (b)) acquired by him or another person under subsection (d), (i)(3)(B)(i) or (7)(A)(ii), (l)(6), (7), (8), (9), (10), (12), (15), or (16) or (m)(2), (4), (5), (6), or (7) of section 6103. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

**Section 7213(A), UNAUTHORIZED INSPECTION OF RETURNS AND RETURN INFORMATION, provides in part:**

(a) PROHIBITIONS -

(1) FEDERAL EMPLOYEES AND OTHER PERSONS - It shall be unlawful for

(B) any person described in section 6103(n) or an officer or employee of any such person, willfully to inspect, except as authorized in this title, any return or return information.

(b) PENALTY -

(1) IN GENERAL - Any violation of subsection (a) shall be punishable upon conviction by a fine in any amount not exceeding \$1,000, or imprisonment of not more than 1 year, or both, together with the costs of prosecution.

**Section 7431, CIVIL DAMAGES FOR UNAUTHORIZED INSPECTION OR DISCLOSURE OF RETURNS AND RETURN INFORMATION, provides in part:**

(a) IN GENERAL -

(2) INSPECTION OR DISCLOSURE BY A PERSON WHO IS NOT AN EMPLOYEE OF THE UNITED STATES - If any person who is not an officer or employee of the United States knowingly, or by reason of negligence, inspects or discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103, such taxpayer may bring a civil action for damages against such person in a district court of the United States.

(b) EXCEPTIONS - No liability shall arise under this section with respect to any inspection or disclosure -

(1) which results from a good faith, but erroneous, interpretation of section 6103,  
or

(2) which is requested by the taxpayer.

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- (c) DAMAGES - In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of -
- (1) the greater of -
- (A) \$1,000 for each act of unauthorized inspection or disclosure of a return or return information with respect to which such defendant is found liable, or
- (B) the sum of -
- (i) the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure, plus
- (ii) in the case of a willful inspection or disclosure or an inspection or disclosure which is the result of gross negligence, punitive damages, plus
- (2) the costs of the action.
- (d) PERIOD FOR BRINGING ACTION - Notwithstanding any other provision of law, an action to enforce any liability created under this section may be brought, without regard to the amount in controversy, at any time within 2 years after the date of discovery by the plaintiff of the unauthorized inspection or disclosure.
- (e) NOTIFICATION OF UNLAWFUL INSPECTION AND DISCLOSURE - If any person is criminally charged by indictment or information with inspection or disclosure of a taxpayer's return or return information in violation of -
- (1) paragraph (1) or (2) of section 7213(a),
- (2) section 7213(A), or
- (3) subparagraph (B) of section 1030(a)(2) of title 18, United States Code,
- the Secretary shall notify such taxpayer as soon as practicable of such inspection or disclosure.
- (f) DEFINITIONS - For purposes of this section, the terms "inspect", "inspection", "return", and "return information" have the respective meanings given such terms by section 6103(b).

**APPENDIX J - Undertaking For Bank Deposits and Assignment of Securities**

**WHEREAS, THE** \_\_\_\_\_ **of**  
\_\_\_\_\_, New York (hereinafter "Bank") has been duly designated in accordance with the provisions of law to receive and keep on deposit: such moneys received by the Commissioner of Taxation and Finance that are required by Section 106 of the State Finance Law to be deposited by the Commissioner to the credit of the State Comptroller; any other moneys received by the Commissioner of Taxation and Finance, except as provided in Section 105 of State Finance Law, and deposited in the Bank by the Commissioner to the credit of the State Comptroller; all moneys received by any other State officer or other person receiving moneys belonging to the State of New York or for which such officer or other person may be responsible in an official capacity and which moneys are deposited in the Bank to the credit of such officer or other person; all moneys received by any State institution and deposited in its name in the Bank; all moneys received from the State by any charitable or benevolent institution supported in whole or in part by the State which moneys are deposited in the Bank to the credit of such charitable or benevolent institution; and all moneys including but not limited to moneys of any municipality, commission, authority or public corporation deposited by the State Comptroller in the Bank in the name of the State Comptroller or as an agent of the State Comptroller, and

**WHEREAS,** the Bank is required by statute to execute and file in the Office of the State Comptroller its undertaking for the safekeeping and prompt payment of any moneys on deposit, with interest, if any.

**WHEREAS,** the Bank hereby executes and delivers such an undertaking to the people of the State of New York in the penal sum of an amount equal to the total of all moneys hereinabove described which are now or shall hereafter be on deposit in or held by the Bank to the credit of such public entities, which undertaking is secured, pursuant to the provisions of the Uniform Commercial Code, and any other applicable State law or federal law, by the deposit of the outstanding securities with the State Comptroller or any party designated by the State Comptroller.

**NOW THEREFORE,** the Bank in consideration of such deposits made or to be made therein, and for value received, does hereby undertake, covenant and agree to and with the People of the State of New York, to safely keep and well and faithfully account for all moneys, which are now or shall hereafter be on deposit in or held by the Bank, and will pay the same promptly at any and all times on legal demand therefore with interest on agreed balances at an agreed rate per annum, to be credited as applicable.

To secure its performance of this Undertaking, the Bank, pursuant to the Uniform Commercial Code and other applicable State law or federal law, does hereby pledge, transfer and assign securities to the State Comptroller for the purpose of granting a security interest in such securities to save harmless and indemnify the People of the State of New York and the depositor from and against all loss, both principal and interest, costs, damages, or expense of any kind or nature, that may be incurred for or on

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account of said funds and moneys heretofore or hereafter deposited in or held by the bank and for which security is required by or pursuant to the provisions of law or for which the Bank shall in any way become liable to the State or the depositor;

The securities pledged, transferred and assigned pursuant to this undertaking and assignment shall be transferred to the State Comptroller or a party designated by him for this purpose, and the State Comptroller or such party shall confirm the receipt of such securities in writing to the Bank.

In the event that the Bank shall either (1) fail to pay to the State or other depositor any funds which the State or depositor has on deposit with the Bank in accordance with the terms of such deposit; or (2) suspend active operations or be determined insolvent by Federal or State officials having authority over the Bank, the Bank shall be in default and the State Comptroller may, in addition to any other remedies provided by law, sell any or all of the securities pledged pursuant to this undertaking and assignment.

And the Bank does hereby irrevocably constitute and appoint the Comptroller of the State of New York its lawful attorney to transfer said securities on the records of the transfer officer, at the transfer office, with full power of substitution in the premises.

On the withdrawal of all moneys so secured and closing and settlement of the account thereof, the State Comptroller will return said securities to the Bank.

**WITNESS** the seal of the said bank and the signature of the \_\_\_\_\_ thereof, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_

\_\_\_\_\_

For the State Comptroller



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STATE OF NEW YORK )

) ss.:

County of \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_ before me personally came \_\_\_\_\_ to me known, who, being by me duly sworn, did depose and say that (s)he resides in \_\_\_\_\_ (include the street and street number, if any, thereof); that (s)he is the \_\_\_\_\_ of the \_\_\_\_\_, the corporation described in and which executed the above instrument; that (s)he knows the seal of said corporation; that the seal affixed to said instrument in such corporate seal; that is was affixed by order of the board of directors of said corporation, and that (s)he signed the above instrument by like order.

\_\_\_\_\_  
**Notary Public**

**APPENDIX K - Authorized User Set Up form**

**AUTHORIZED USER SET UP FORM**

Authorized User Contact Information:

Agency

Designated contact person

Agency Address

Phone/ Fax

Email address


Contractor's Information

Name of institution

Address

Routing number

Account number for this specific agency account- with file name ( wire transfers )


Purpose/Requirements of Debit Card Services

Purpose per specific Authorized User:

--

Requirements:

Single load or reloadable cards?

Single card with single and/or multiple persons accessible to the allocated funds?


Scope of Debit Card Services:

--

Issuance of the Debit Cards:

Timeframe of delivery:

Agency/bank/recipient information to be printed on the face of each card.

--

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--

File Transfer Requirements:

Recipient name

--

Last 4 of social security number

--

Address

--

Dollar Amount

--

End of Form