

AGREEMENT

between

The New York State Office of Children and Family Services having its principal offices at 52 Washington Street, Rensselaer, New York 12144

(hereinafter "OCFS" or the "State"),

and

located at

(hereinafter "the Contractor").

WHEREAS, The OCFS initiated a Procurement (Invitation for Bid/Request for Proposal/single source/sole source) to contractually secure services; and

WHEREAS, the Contractor submitted a proposal; and

WHEREAS, the OCFS, selected the Contractor as a successful respondent to the Procurement to provide services and desires to engage the Contractor to fulfill OCFS's needs under the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained herein, the parties agree as follows:

Article 1: Agreement Duration and Amendment

- A. This Agreement shall commence on the start date of the period as stated on the cover page of this agreement and will continue until the end date of the period as stated on the cover page of this agreement unless renewed according to the renewal provisions, if any, as stated in Appendix C.
- B. The State shall have the right to renegotiate the terms and conditions of this Agreement in the event applicable New York State (State) or Federal policy, rules, regulations and guidelines are altered from those existing at the time of this Agreement in order to be in continuous compliance therewith. This Agreement is subject to amendment only upon mutual consent of the parties, reduced to writing and approved by the Comptroller of the State of New York.

Article 2: Executory Provision

- A. The State Finance Law of the State of New York, Section 112, requires that any contract made by a State Agency which exceeds fifty thousand dollars (\$50,000) in amount be first approved by the Comptroller of the State of New York before becoming effective. The parties recognize that this Agreement is wholly executory until and unless approved by the Comptroller of the State of New York.
- B. The State of New York is not liable for any cost incurred by the Contractor in preparation for or prior to the approval of an executed contract by the Comptroller of the State of New York. Additionally, no cost will be incurred by the State for the Contractor's participation in any pre-contract award activity.
- C. This Agreement and the Exhibits and Appendices, attached hereto and incorporated by reference herein, constitute the entire agreement between the parties with respect to the subject matter; all other prior agreements, representations, Statements, negotiations and undertakings are superseded hereby. The terms, provisions, representations and warranties contained in this Agreement shall survive performance hereunder. It is understood that unless the context clearly indicates otherwise, all references herein to this Agreement shall be deemed to include the Exhibits and Appendices attached hereto and incorporated by reference herein.

Article 3: Standard Contract Provisions

- A. Standard New York State Contract Appendix A, attached hereto as Appendix A, is hereby fully incorporated into this Agreement.
- B. The parties agree that this Agreement shall be construed and interpreted in accordance with the Laws of the State of New York. The Contractor shall be required to bring any legal proceeding against the State arising from this Agreement in New York State courts.
- C. Should any provision of this Agreement be declared or found to be illegal, unenforceable, ineffective or void, then each party shall be relieved of any obligation arising from such provision; the balance of this Agreement, if capable of performance, shall remain in full force and effect.
- D. No term or provision of this Agreement shall be deemed waived and no breach consented to, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by a party to, or waiver of, a breach under this Agreement shall not constitute or consent to, a waiver of, or excuse for any other, different or subsequent breach.
- E. It shall be understood that the Contractor is an independent contractor, and the Contractor, its agents, officers and employees, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees of the State.

Article 4: Assurances

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

Article 5: Contractor Requirements

- A. The Contractor agrees to assume complete responsibility for the cost effective and timely accomplishment of all activities and duties required by this Agreement and to carry out those activities and duties in a competent and timely manner. The Contractor also agrees to perform in accordance with the specifications contained in the Procurement, as well as its proposal.
- B. The Contractor accepts sole and complete responsibility for the timely accomplishment of all activities required under this Agreement. Contractor shall also:
 - 1. Maintain an adequate administrative organizational structure sufficient to discharge its contractual responsibilities.
 - 2. Provide for normal day-to-day communications and maintain the level of liaison and cooperation with the State as necessary for proper performance of all contractual responsibilities.
 - 3. Replace any employee whose continued presence would be detrimental to the success of the State's efforts with an employee of equal or better qualifications. The State Project Director will exercise exclusive judgment in this matter and will be required to make such a request in writing only upon written request of the Contractor.
 - 4. Notify the State in writing of any changes in the persons designated to bind the Contractor.
 - 5. Ensure that all contacts by Contractor personnel with other external organizations, to fulfill the objectives of this Agreement, are cleared and coordinated by the State. The State will fulfill this role promptly, so as not to impede the Contractor's timely performance hereunder.

6. Assume responsibility for the accomplishment of all activities and duties required by this Agreement and carry out those activities and duties in a competent and timely manner.
 7. Notify the State within three business days, in writing, of each problem that threatens the success of the project, including a recommendation for resolution whenever possible.
 8. Agree that no aspect of Contractor performance under this Agreement will be contingent upon State personnel or the availability of State resources with the exception of 1) Those activities specifically identified in this Agreement as requiring State acquisition, approval, policy decisions, or policy approvals, 2) The normal cooperation which can be expected in a contractual relationship. Such actions by the State will not be unreasonably delayed, and except as stated specifically herein, the State shall not be liable for any damages for delays.
 9. Reasonably cooperate with any other contractors who may be engaged by the State to carry out responsibilities associated with this Agreement and immediately take into account changes mandated by Federal regulatory agencies and the State due to changes in policies, regulations, statutes or judicial interpretations, which the State and/or the Contractor may become aware of.
 10. Recognize and agree that any and all work performed outside the scope of this Agreement shall be deemed by the State to be gratuitous and not subject to charge by the Contractor.
 11. Implement changes within the scope of work of this Agreement, in accordance with a State approved schedule, including changes in policy, regulation, statute or judicial interpretation.
- C. The Contractor agrees that it and its personnel will at all times comply with all security regulations in effect at the State's premises, or any premises assigned, and externally for materials belonging to the State or to the Project.
 - D. The Contractor, if a municipal corporation, represents that it is a self-insured entity. If a not-for-profit corporation or entity other than a self-insured municipal corporation, the Contractor agrees to obtain and maintain in effect a general policy of liability insurance in an appropriate amount. The Contractor agrees that it will require any and all Subcontractors with whom it subcontracts pursuant to this contract to obtain and maintain a general policy of liability insurance in an appropriate amount.
 - E. The Contractor agrees to secure and keep in effect during the term of this agreement a policy of comprehensive liability insurance (if required) covering services to be performed pursuant to this agreement and to provide OCFS with a certificate of insurance indicating such coverage is in effect. Such certificate shall name OCFS as an additional insured and shall state that the policy will not be cancelled or changed without 10 days prior written notice to OCFS.
 - F. The Contractor shall secure and keep in effect during the term of this agreement workers compensation and disability benefits coverage as required by law. The Contractor shall provide to OCFS certificates of such coverage, or proof that such coverage is not required, in such form as required by the Worker's Compensation Board.

Article 6: Nonassignability

- A. Full responsibility for the delivery of services provided by another firm acting as a subcontractor to the Contractor under this Agreement shall be assumed by the Contractor. Should the Contractor seek external financing, the State reserves the right to approve the assignment of the contract for financing purposes. The State shall consider the prime contractor to be sole contact with regard to all provisions of this Agreement.
- B. Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person, corporation or other entity, other than the parties hereto and their successors in interest and assigns, any rights or remedies under or by reason of this Agreement.
- C. Subcontracting or assignment of the Contractor's duties and responsibilities will not be allowed without prior written approval of the State as specified in Appendix A. The Contractor shall furnish to the State the following:
 - (1) A description of the supplies or services to be provided under the proposed subcontract;
 - (2) Identification of the proposed subcontractor, including protected class status; and
 - (3) Any other reasonable information or documentation requested by the State.

Article 7: Charges

- A. Payment to the Contractor shall be based on invoices submitted by the Contractor or on a Standard New York State Claim for Payment in a form acceptable to the State and the Comptroller of the State of New York. The State will make best efforts to process all invoices or claims for payment within thirty (30) days of their receipt; however, failure to make payment within said timeframe shall not be considered a breach of contract.
- B. Payment shall be made at the rates, frequency and manner as set forth in Appendix C attached hereto.
- C. The State shall not be liable for the payment of any taxes under this Agreement however designated, levied or imposed. The State represents that the Contractor is not liable for the payment of any transfer taxes including, but not limited to, sales taxes upon goods or services purchased for or provided to the State.

Article 8: Performance Standards and Liquidated Damages

Per specification requirements indicated in Appendix D

Article 9: Reserved for future use

Article 10: Public Officer's Law

- A. The Contractor agrees not to engage in any conduct which the Contractor knows would violate or would assist an employee of the State in violating Sections 73 and 74 of the Public Officers' Law.
- B. The Contractor further recognizes that an administrative or judicial finding that a Contractor has violated any of the statutes specified in the Contractor/Subcontractor Background Questionnaire completed prior to the award of this contract may entitle the State to terminate the contract, at its discretion, within thirty days after the Contractor notifies the State of such finding or the State notifies the Contractor that it has become aware of such finding.
- C. Any termination of the contract by the State under this Article shall be deemed to be a termination of the contract for cause. The remedies set forth in this section shall be in addition to any other remedy available to the State under this contract or under any other provisions of law.

Article 11: Rights of the State

- A. LICENSE/OWNERSHIP/TITLE OF PRODUCTS FURNISHED - contractor warrants full ownership, clear title or perpetual license rights to any and all tangible or intangible products furnished, used or modified by the Contractor or third parties on behalf of the State, and Contractor shall be solely liable for the full cost of acquisition associated therewith. Contractor shall provide the State with appropriate documentation indicating the vesting of such rights in Contractor, and/or the right to transfer or transfer of such rights, as requested by the State. The cost of obtaining such rights for continued perpetual use of such product(s) by the State upon Project completion shall be deemed to have been included by Contractor in its proposal. Such products include, without limitation, all hardware, commodities, custom programming or third party software, training modules, printed materials, source codes, or any other products or services furnished pursuant to this Agreement. The Contractor fully indemnifies the State for any loss, damages or actions arising from a breach of said warranty without limitation. The State and Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes: (a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and (b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

- B. TITLE TO PROPRIETARY INFORMATION FURNISHED FOR TESTING PURPOSES- Any and all proprietary written documentation, information, object or source code and software provided to the State for use in conjunction with an evaluation, shall remain the property of Contractor. In such event, Contractor hereby grants the State and its Authorized Users a perpetual, non-transferable and non-exclusive license to use all such documentation, technical information, confidential business information and all software and related documentation, in whatever form recorded (all hereinafter designated "property"), which are furnished to the State for testing purposes only.
- C. OWNERSHIP/TITLE TO CUSTOM PRODUCTS/PROGRAMMING DELIVERABLES - All custom products, including custom programming or any other deliverables, including, without limitation: software source code, object code, user or training manuals, programming, reports, and any other materials, preliminary, final and otherwise, prepared, written or developed for the State in the performance of services under this Agreement (hereinafter "Custom Products") shall be furnished to and shall become the sole and exclusive property of the State and shall be treated as confidential with the reciprocal proprietary obligations in the foregoing paragraph B of Article 11 imposed upon the Contractor, its subcontractors and partners. The State retains ownership rights to modifications developed for the State pursuant to this Agreement, including modifications made or incorporating third party proprietary components, or components transferred under perpetual license to the State pursuant to paragraph A of Article 11. In all such events, Contractor shall be deemed to have granted or secured a perpetual license to the State for Contractor or third party product being furnished and modified, in accordance with the provisions of paragraph A of Article 11. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the custom products, including custom programming or any other deliverables, when completed and delivered to the State are protected against unauthorized copying, reproduction and marketing by or through Contractor.

Article 12: Document Incorporation and Order of Precedence

- A. This Agreement consists of:
- (1) The body of this Agreement (i.e., that portion preceding the signatures of the parties in execution);
 - (2) The Exhibits attached to this Agreement body; and
 - (3) The Appendices attached to or incorporated by reference in this Agreement body.
 - (4) Procurement documents (if noted on cover page)
 - (5) Contractor's proposal (if noted on cover page)
- B. In the event of any inconsistency in or conflict among the document elements of this Agreement identified in this Section, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the following order:
- (1) First, Appendix A;
 - (2) Second, body of this Agreement and the Exhibits;
 - (3) Third, the Procurement documents (if noted on cover page); and
 - (4) Fourth, the Contractor's Proposal (if noted on cover page).
- C. This Agreement as defined in this Section constitutes the entire agreement between the parties with respect to the subject matter; all prior agreements, representations, Statements, negotiations and undertakings are superseded hereby. The terms, provisions, representations and warranties contained in this Agreement shall survive performance hereunder.

Article 13: Interpretation and Disputes

- A. This Agreement shall be construed and interpreted in accordance with the Laws of the State of New York. Except as otherwise provided for in the Agreement, any dispute which is not disposed of by agreement shall be submitted in writing to and decided by the Commissioner of the Office of

Children and Family Services (Commissioner) or his/her duly authorized representative(s) or designee(s).

- B. If the Contractor is unwilling to accept the decision of the Commissioner or a decision is not made in ninety (90) days, it may then pursue its normal legal remedies de nova, but it is specifically agreed that any and all reports made by the Commissioner upon the disagreement at issue shall be admissible as evidence in any court action taken with respect to the matter. Pending conclusion of any dispute or disagreement by whatever procedure, the interpretation placed upon the Agreement by the STATE shall govern operation thereunder and the Contractor shall continue to perform under the Contract. The Contractor shall be required to bring all legal proceedings relating to this Agreement against the OCFS or the State of New York in the courts located in the State of New York.

Article 14: Indemnification of the State

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

Article 15: Force Majeure

Neither party shall be liable or deemed to be in default for any delay or failure in performance beyond its control under this Agreement resulting directly or indirectly from acts of God, civil or military authority not within the control of the State, acts of public enemy, wars, riots, civil disturbances, insurrections, accidents, fire, explosions, earthquakes or flood, or acts of omission or commission of individuals not under the respective parties' control except as specifically stated elsewhere in this Agreement. The parties are required to use best efforts to eliminate or minimize the effect of such events during performance of this Agreement.

Article 16: Record Retention

- A. The Contractor agrees to preserve all Agreement-related records in accordance with the provisions of Paragraph 10 of Appendix A for the term of this Agreement. Records involving matters in litigation shall be kept for a period of not less than three (3) years following the termination of the litigation. Microfilm copies of any Agreement-related documents may be substituted for the originals with the prior written approval of the State, provided that the microfilming procedures are accepted by the State as reliable and are supported by an adequate retrieval system.
- B. The Contractor shall be responsible for assuring that the provisions of this Section shall apply to any subcontract related to performance under this Agreement.

Article 17: Access to And Audit of Agreement Records

- A. All records and information obtained by the State pursuant to the provisions of this Agreement, whether by audit or otherwise, shall be usable by the State solely for the purpose of performing this Agreement in any manner, in its sole discretion, as it deems appropriate and the Contractor shall have no right of confidentiality or proprietary interest in such records or information. Notwithstanding the preceding sentence and in addition to the provisions set forth in Appendix A, the State agrees, in those instances in which it has discretion, not to disclose outside those Government agencies involved in the performance of this Agreement and then only to the personnel who are involved in the performance, the following data:
- (1) Any resume or other description of qualifications which includes the name of the individual;
 - (2) Any individual's actual salary;
 - (3) The Contractor's indirect rates including labor overhead, General and Administrative (G&A) and fee; and
 - (4) The methodology for calculating those indirect rates including the allocation base.
 - (5) The Contractor's corporate financial Statements.
- B. The Contractor shall promptly notify the State of any request by anyone for access to any records maintained pursuant to this Agreement. Access by Federal or State bank regulatory agents, or Contractor's regular outside auditors to Contractor's financial records, pursuant to regularly scheduled or routine audits or inspection of Contractor, shall not require notification to the State provided that rights of confidentiality or proprietary interests are preserved.
- C. The Contractor shall be responsible for assuring that the provisions in this Section shall apply to any subcontract related to performance under this Agreement.

Article 18: Confidentiality of Information

The Contractor, its officers, agents and employees and subcontractors, shall treat all information, with particular emphasis on information relating to recipients and providers, which is obtained by it through its performance under this Agreement, as confidential information to the extent required by the Laws of the State of New York and of the United States and any regulations promulgated there-under.

1. Individually identifiable information relating to any eligible recipient or provider shall be held confidential and shall not be disclosed by the Contractor, its officers, agents and employees or subcontractors, without the prior written approval of the Commissioner or a designee.
2. The use of information obtained by the Contractor in the performance of its duties under this Agreement shall be limited to purposes directly connected with such duties.
3. The Contractor shall promptly advise the State of all requests made to Contractor for information described in paragraph 1., above.
4. The Contractor shall be responsible for assuring that any agreement between the Contractor and any of its officers, agents and employees or subcontractors contains a provision which strictly conforms to the provisions of this subsection.

Article 19: Affirmative Action

Per Appendix M/WBE

Article 20: Termination of the Agreement

The Agreement shall be subject to the following termination provisions:

- A. All or any part of this Agreement may be terminated by mutual written agreement of the contracting parties.
- B. All or any part of this Agreement may be terminated by the State in the event of failure of the Contractor to perform within the time requirements set forth in this Agreement.
- C. All or any part of this Agreement may be terminated by the State for cause upon the failure of the Contractor to comply with the terms and conditions of this Agreement, including the attachments

hereto, provided that the State shall give the Contractor written notice via registered or certified mail, return receipt requested, or shall deliver same by hand-receiving Contractor's receipt therefore, such written notice to specify the Contractor's failure and the termination of this Agreement. Termination shall be effective ten (10) business days from receipt of such notice, established by the receipt returned to the State. The Contractor agrees to incur no new obligations nor to claim for any expenses made after receipt of the notification of termination.

- D. This Agreement may be terminated if the State deems that termination would be in the best interest of the State provided that the State shall give written notice to the Contractor not less than thirty (30) days prior to the date upon which termination shall become effective, such notice to be made via registered or certified mail, return receipt requested or hand-delivered with receipt made. The date of such notice shall be deemed to be the date of postmark in the case of mail or the date of Contractor's receipt for notice in the case of hand delivery. In the case of termination under this subsection, the State agrees to pay the Contractor for reasonable and appropriate expenses incurred in good faith. The Contractor, on its part, agrees to incur no new obligations after receipt of notification of termination and to cancel as many outstanding obligations as possible.
- E. This Agreement may be deemed terminated immediately at the option of the State upon the filing of a petition in bankruptcy or insolvency, by or against the Contractor. Such termination shall be immediate and complete, without termination costs or further obligations by the State to the Contractor.
- F. Should the State determine that Federal and State funds are unavailable, the State may terminate the Agreement immediately upon notice to the Contractor. If the initial notice is oral notification, the STATE shall follow this up immediately with written notice. The State will be obligated to pay the Contractor only for the expenditures made and obligations incurred by the Contractor until such time as notice of termination is received either orally or in writing by the Contractor from the State.
- G. In the event of termination for any reason, the Contractor shall not incur new obligations for the terminated portion and the Contractor shall cancel as many outstanding obligations as possible. Contractor shall take all reasonable measures to mitigate any damages for which the State may be liable.
- H. If this Agreement is terminated for cause, the State shall have the right to award a new contract to a third party. In such event, the Contractor shall be responsible for damages, and for all additional costs incurred in reassigning the contract.
- I. It is understood that the State reserves the right to suspend or reduce Contractor services during the term of the Agreement or during a task order period. Such action(s) by the State shall not be considered a breach of this Agreement or otherwise give rise to damages on the part of the Contractor, provided, however, that Contractor is given written notification of such action.
- J. The State reserves the right to terminate the award resulting from this procurement in the event it is found that the certification filed by the Offeror in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, The State may exercise its termination right by providing written notification to the award recipient.

Article 21: Patent/Copyright Indemnification

Contractor will indemnify, defend and hold the State harmless from and against all Damages, expenses, including reasonable attorney's fees), claims, judgments, liabilities and costs which may be finally assessed against the State in any action for infringement of a United States Letter Patent with respect to the products furnished, or of any copyright, trademark, trade secret or other third party proprietary right, provided that the State shall give the 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 the Contractor.

If the use of any item(s) or part(s) thereof 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 State the right to continue using such

item(s) or part(s) thereof, as applicable; (ii) to modify the component so that it becomes non-infringing equipment of at least equal quality and performance; or (iii) to replace said item(s) or part(s) thereof, as applicable, with non-infringing components of at least equal quality and performance.

The foregoing provisions shall not apply to any infringement occasioned by modification by the State of any tangible or intangible products without Contractor's approval or the use of any equipment with any adjunct device added by the State without the consent of the Contractor.

In the event that an action at law or in inequity is commenced against the State arising out of a claim that the State's use of a product under this Agreement 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 this Agreement, Contractor shall immediately notify the State and the Office of the Attorney General in writing and shall specify to what extent the Contractor believes it is obligated to defend and indemnify under the terms and conditions of this Agreement. Contractor shall in such event protect the interests of the State and secure a continuance to permit the State to appear and defend its interests in cooperation with Contractor as is appropriate, including any jurisdictional defenses the State may have.

Article 22: Lobbying Certification

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

Article 23: Notification

- A. Any notice or other communication required by or pertaining to this Agreement shall be sent to the destinations indicated by the State's designated Project Director or the Contractor's designated Project Director. If no destination has been so indicated, such notices or communications may be directed to the address(es) or destination(s) at which the parties to this Agreement were located when this Agreement was executed or to the last known address or destination for such party. Contractor shall be responsible for notifying the State of any change of address or destination to which notices and communications should be sent.
- B. Except as otherwise specified elsewhere in this Agreement, notices or communications may be given orally or in writing and shall be effective when received. To remain effective, oral notifications must be confirmed in writing, transmitted in a manner to be received no later than ten (10) working days after the oral notification. Notices or communications may be transmitted by personal delivery, ordinary U.S. Mail, registered or certified mail, overnight delivery service, telegram, telephone, facsimile device, electronic means or any other means of transmission that results in the fixation of the information transmitted in a tangible medium of expression.
- C. Notices or communications shall be considered received on the day such receipt is acknowledged by a signed receipt or by any other means of verification that is recorded in a tangible medium of expression. Notices or communications from the State to the Contractor shall also be considered received as follows:
 1. Oral notifications shall be considered received on the date indicated as the date of conversation in any written confirmation or on the day sworn in an affidavit to be the date of such conversation, unless contested.
 2. Notices or communications by ordinary, registered or certified U.S. Mail shall also be considered received on the first working day after five (5) days following the day the transmittal

is postmarked or following the day sworn in an affidavit to be the date the transmittal was deposited in a post office or an official depository.

3. Notices or communications dispatched by overnight delivery service shall be considered received one (1) working day after having been dispatched.
4. Transmissions by facsimile device or electronic means shall be considered received, upon the receipt by the State of a signal from the equipment of the Contractor indicating that the transmission was received.
5. Notices or communications transmitted by personal delivery shall be considered received on the day the transmission is delivered to an agent of the Contractor.
6. Any other transmissions shall be considered received no later than five (5) working days after transmission by the STATE is completed.

Article 24: Conflict of Interest

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

Article 25: Other Agency Use

The Contractor must extend the terms and conditions to any State agency in New York State. It must also extend the terms and conditions to (1) County Agencies in New York State providing human services such as income maintenance, job training, employment and social services or health related services as well as (2) Local Social Services Districts in New York State including New York City, which is considered a single LSSD, consisting of the Human Resources Administration, The Administration for Children's Services, and the Department of Homeless Services.

Article 26: Warranty for Deliverables/ Workmanship

Contractor guarantees that any required deliverables, tangible or intangible, regardless of form, shall be unconditionally guaranteed for the full contract term. This warranty will be voided by the misuse, accident, operation in other than the specified operating environment, unauthorized modification of the source code or failure caused by a product for which the Contractor is not responsible.

Article 27: Vendor Responsibility

By signing this contract, the contractor certifies that within the past three years the contractor has engaged in no actions that would establish a basis for a finding by OCFS that the contractor is a non-responsible vendor or, if the contractor has engaged in any such action or actions, that all such actions have been disclosed to OCFS prior to entering into this contract. The actions that would potentially establish a basis for a finding by OCFS that the contractor is a non-responsible vendor include:

- The contractor has had a license or contract suspended, revoked or terminated by a governmental agency.

- The contractor has had a claim, lien, fine, or penalty imposed or secured against the contractor by a governmental agency.
- The contractor has initiated a bankruptcy proceeding or such a proceeding has been initiated against the contractor.
- The contractor has been issued a citation, notice, or violation order by a governmental agency finding the contractor to be in violation of any local, state or federal laws.
- The contractor has been advised by a governmental agency that a determination to issue a citation, notice or violation order finding the contractor to be in violation of any local, state or federal laws is pending before a governmental agency.
- The contractor has not paid all due and owed local, state and federal taxes to the proper authorities.
- The contractor has engaged in any other actions of a similarly serious nature.

Where the contractor has disclosed any of the above to OCFS, OCFS may require as a condition precedent to entering into the contract that the contractor agree to such additional conditions as will be necessary to satisfy OCFS that the vendor is and will remain a responsible vendor. By signing this contract, the contractor agrees to comply with any such additional conditions that have been made a part of this contract.

By signing this contract, the contractor also agrees that during the term of the contract, the contractor will promptly notify OCFS if the contractor engages in any actions that would establish a basis for a finding by OCFS that the contractor is a non-responsible vendor, as described above.

Article 28: State Tax Law Section 5-a

By signing this contract, the contractor agrees to comply with the State Tax Law section 5-a.

Article 29: Consultant Disclosure

Pursuant to Chapter 10, New York State Office of Children and Family Services (OCFS) must require all contractors, including sub-contractors, to submit an annual report. As a result of these changes in law, State contractors are required to disclose, by employment category; the number of persons employed to provide services under a contract for consulting services, the number of hours worked, and the amount paid to the contractor by the State as compensation for work performed by these employees. Be reminded that this includes information on any persons working under a subcontract with the State contractor. The Office of the State Comptroller (OSC) has a prescribed format for reporting.

The legislation also expands the definition of contracts for consulting services to include any contract entered into by a State Agency including: analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services. Additional information can be found in Bulletin No. G-226 issued by OSC. The Bulletin details the requirements under the Consultant Disclosure Legislation. This bulletin can be accessed at: <http://www.osc.state.ny.us/agencies/gbull/g-226.htm>.

The Legislation requires that contractors complete OSC **Form B - State Consultant Services- Contractor's Annual Employment Report** for consultant services for State Fiscal year 2006-07, indexed as form **OCFS-4843**. Contractors are required to report for the period starting April 1, 2006 or the contract start date, whichever is later, to March 31, 2007 and annually thereafter for the duration of the contract.

This Consultant Employment Report provides a format for reporting the actual number of employees providing services on the contract or through subcontracts, and is due to OCFS, OSC and the NYS Department of Civil Service, at the addresses identified below, by May 15, 2007 and annually thereafter. A separate **Form B** must be submitted for each contract. Please submit a copy of this form to each of the following:

Mr. Kevin Sweet
NYS Office of Children and Family Services
Bureau of Contract Management
52 Washington Street South Building, Room 202
Rensselaer, New York 12144

and:

NYS Office of the State Comptroller
Bureau of Contracts
110 State Street 11th Floor
Albany, New York 12236
Attn: Consultant Reporting

and:

NYS Department of Civil Service
Alfred E. Smith Office Building
Counsel's Office, 8th Floor
80 South Swan Street
Albany, New York 12239