

SOFTWARE LICENSE AND SERVICES AGREEMENT 2008

BETWEEN

**THE NEW YORK STATE
OFFICE OF THE CHIEF INFORMATION OFFICER /
OFFICE FOR TECHNOLOGY**

AND

ORACLE USA, INC.

**FOR PROPRIETARY SOFTWARE AND RELATED SERVICES
CONTRACT NO. CM00884**

TABLE OF CONTENTS

<u>ARTICLE</u>	<u>TITLE</u>	<u>PAGE</u>
I	AGREEMENT TERM AND DEFINITIONS	1
II	DESCRIPTION OF WORK	4
III	CONFLICT OF TERMS / ORDER OF PRECEDENCE	5
IV	PROGRAMS	5
V	PROGRAM DELIVERY	9
VI	TRIAL PROGRAMS	10
VII	CONSULTING SERVICES	11
VIII	TRAINING / EDUCATION	12
IX	TECHNICAL SUPPORT	13
X	SOURCE CODE AND MATERIAL ESCROW	14
XI	COMPENSATION / PAYMENTS	15
XII	ACCEPTANCE	17
XIII	PAYMENT INVOICES	17
XIV	WARRANTY	18
XV	INDEMNIFICATION AND LIABILITY	20
XVI	INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION	21
XVII	CONFIDENTIALITY AND NON-DISCLOSURE	22
XVIII	EMPLOYEES, SUBCONTRACTORS AND AGENTS	23
XIX	SUSPENSION OF WORK	24
XX	BREACH / DISPUTE RESOLUTION	25
XXI	COOPERATION / CONFLICT RESOLUTION	25
XXII	TERMINATION	26
XXIII	FORCE MAJEURE	27
XXIV	NOTICES	27
XXV	CONFLICTS OF INTEREST	28
XXVI	REPORTS	28

XXVII	LICENSE AUDIT	28
XXVIII	POLICIES AND SECURITY	29
XXIX	INSURANCE	30
XXX	MISCELLANEOUS	31

EXHIBITS AND APPENDICES

EXHIBIT 1	ORACLE TECHNICAL SUPPORT POLICIES
EXHIBIT 2	LIST OF COVERED AGENCIES
EXHIBIT 3	ORACLE TECHNOLOGY MIGRATION MATRIX
EXHIBIT 4	TECHNICAL SUPPORT RENEWAL / PRICING
EXHIBIT 5	UNLIMITED LICENSE SOFTWARE ORDER (FOR THE SFS)
EXHIBIT 6	PROGRAM PRICEHOLD LIST (FOR AUTHORIZED CONTRACT USERS)
EXHIBIT 7	ORDER FOR INSTALLATION SERVICES (FOR THE SFS)
EXHIBIT 8	ORDER FOR SUPPLEMENTAL CONSULTING SERVICES (FOR THE SFS)
EXHIBIT 9	ORACLE CONSULTING RATE CARDS
EXHIBIT 10	ORDER FOR ORACLE UNIVERSITY (FOR THE SFS)
EXHIBIT 11	ORDER FOR ADVANCED CUSTOMER SERVICES (FOR THE SFS)
EXHIBIT 12	ORDER FORM FOR PRICEHOLD PURCHASES (BY AUTHORIZED CONTRACT USERS)
EXHIBIT 13	NYFMS - ORACLE FUNCTIONAL / TECHNICAL RESPONSE & CLARIFICATIONS
EXHIBIT 14	ANCILLARY GUIDE FOR DETERMINING PROCESSOR COUNTS FOR TECHNOLOGY CERTIFICATION
APPENDIX A	STANDARD CLAUSES FOR NYS CONTRACTS
APPENDIX B	MINORITY-OWNED / WOMAN-OWNED BUSINESS ENTERPRISES
APPENDIX C	OTHER REQUIRED FORMS
APPENDIX D	STATEMENT ON DISCRIMINATION / HARASSMENT

SOFTWARE LICENSE AND SERVICES AGREEMENT 2008
BETWEEN
THE NEW YORK STATE
OFFICE OF THE CHIEF INFORMATION OFFICER /
OFFICE FOR TECHNOLOGY
AND
ORACLE USA, INC.

THIS AGREEMENT (hereinafter "Agreement") made this ____ day of May, 2008 (the effective date) between the New York State Office of the Chief Information Officer/Office For Technology (hereinafter, "OCIO/OFT") whose main office and principal place of business is State Capitol, ESP, PO Box 2062, Albany, New York, 12220, and Oracle USA, Inc. (hereinafter "Contractor" or "Oracle"), a Colorado corporation whose main office and principal place of business is 500 Oracle Parkway, Redwood Shores, California 94065, Employer Identification Number: 84-1332677.

WITNESSETH:

WHEREAS, the State desires to replace the current financial management systems used by various New York State agencies with an integrated statewide Financial Management System ("NYFMS") which will use standard functionality with tightly integrated third party products capable of providing a single interface to the new Central Accounting System ("FOCAS") being developed by the Office of the State Comptroller and to integrate with agency-specific financial systems where necessary, which is cumulatively hereinafter referred to the Statewide Financial System ("SFS"); and

WHEREAS, the New York State Division of the Budget ("DOB") and the OCIO/OFT have partnered to sponsor the NYFMS Project, and have identified a benefit in viewing the purchase of software for NYFMS within a broader context of the State's business relationship with Oracle; and

WHEREAS, the DOB issued a Request for Proposal for an integrated statewide Financial Management System on October 29, 2007, for which Oracle was the single respondent to this procurement; and

WHEREAS, OCIO/OFT has determined that a single statewide contract for Oracle programs and services will benefit the Agencies (as defined herein) and standardize terms and pricing for the Agencies; therefore, the State desires to enter into a single source statewide contract with Oracle; and

WHEREAS, to further the interests of the State, the State and Oracle wish to enter into this Agreement to provide for the purchase of Oracle programs, technical support, consulting and training services by the OCIO/OFT for the SFS, and individually by the Agencies as Authorized Contract Users (as defined herein); and

NOW, THEREFORE, in consideration of the terms and the mutual covenants and obligations of the parties set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do agree as follows:

I. AGREEMENT TERM AND DEFINITIONS

A. Agreement Term

Except as otherwise provided in this Agreement, the term of this Agreement shall be ten (10) years, commencing on May 30, 2008, and ending on May 29, 2018, subject to earlier termination as provided for in Article XXII hereof. The State reserves the option to renew this Agreement for two (2) additional five (5) year terms, under the same terms and conditions (as may be subsequently amended) subject to the approval of the Office of the Attorney General and the New York State Office of the State Comptroller. The State shall provide the Contractor notice of at least ninety (90) days prior to the end of the then current term of this Agreement, of its election to extend this Agreement pursuant to this Article.

Subject to the terms and conditions set forth in this Agreement, the licenses for the Programs (as defined herein) shall be perpetual. The Licenses for Programs granted herein shall survive termination and/or expiration of this Agreement but may be terminated, as provided in Article XXII.

OCIO/OFT shall purchase Programs and Services for the SFS. OCIO/OFT shall be responsible for any breaches of the Agreement arising from the Program Licenses it purchases for the SFS hereunder.

An Authorized Contract User may purchase Programs and Services under this Agreement for its individual agency use. By placing an order under this Agreement, each Authorized Contract User agrees to be bound by the terms and conditions of the Order Form it issues and this Agreement. For the purposes of such order, "the State" as used in this Agreement shall be deemed to refer to such Authorized Contract User, unless the context indicates otherwise herein. Each Authorized Contract User shall be individually responsible to the Contractor for its compliance with and its breaches of such terms and conditions.

The acquisition and renewal of the services provided by the Contractor to maintain and support the Programs are set forth in Article IX, the Contractor's Technical Support Policies (attached in Exhibit 1 and made a part hereof) and other exhibits. Services provided under Technical Support Policies shall hereinafter sometimes be referred to as "Technical Support". The Technical Support Policies shall be updated on the anniversary of the execution of this Agreement by Addenda (as defined below).

B. Definitions

ADDENDA: An addition to the Agreement, which is binding on the parties, but not a contract amendment.

AGENCY: Those New York State governmental entities, which may include departments, agencies, boards, commissions, offices, and institutions, which receive an annual operating appropriation as part of the enacted budget, made under a title of "State Operations", and excluding State University of New York, the City University of New York, or any public authority.

The above-defined Agencies are specifically listed in Exhibit 2. Such Agencies are (1) entitled to use the Programs and Services acquired by OCIO/OFT for the SFS and (2) Authorized Contract Users. Exhibit 2 may be updated by the OCIO/OFT periodically, by Addenda, as necessary to conform the Exhibit to the definition above. OCIO/OFT shall provide a copy of any such Addenda to the Contractor immediately thereafter.

ANCILLARY PROGRAMS: Third party materials specified in the Program Documentation, which may only be used for the purposes of installing or operating the programs with which the Ancillary Programs are delivered.

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

AUTHORIZED CONTRACT USER: Those Agencies authorized to purchase the Programs and Services for their individual use, as set forth in Articles IV, VII, VIII, and IX, are listed in Exhibit 2.

COMPROLLER: Comptroller of the State of New York.

CONSULTING SERVICES: Consulting services provided for SFS as set forth in Article VII or as specified in an Order Form (as defined hereinafter) signed by an Authorized Contract User and the Contractor.

CONTRACT DELIVERABLES: Deliverables developed by the Contractor solely for the State during the performance of Consulting Services as defined in an Exhibit or on an applicable Order Form.

INCREMENTAL LICENSES: An increase in the number of licenses for Program(s) previously acquired by an Authorized Contract User or an increase in the number of licenses acquired for the SFS under Exhibit 5 after the Certification Date. Such Incremental License purchases are accepted upon delivery.

INSTALLATION: The installation of the Programs by the Contractor, as set forth in Article VII.

LICENSE: Use rights for the Programs, as set forth in Article IV.

LICENSE COMMENCEMENT DATE: The date on which the Programs are delivered, or if no delivery is necessary, as in the case of Incremental License purchases, the effective date set forth on the relevant Order Form.

LICENSE SET: A logically related group of licenses, which is defined in detail in the Technical Support Policies attached hereto as Exhibit 1.

ORDER FORM: The form set forth in Exhibit 12 to this Agreement, which constitutes a binding order for Programs and Services. The Order Form shall set forth the Programs and / or Services ordered and the associated fees, which apply to the order in accordance with the terms of this Agreement.

PRIOR LICENSED SOFTWARE: License agreements between the Authorized Contract Users and the Contractor entered into prior to this Agreement.

PRIVATE TRAINING EVENT (PRIVATE EVENT): Training courses provided by Oracle University which are requested by the State and which are held at a State training site or at an Oracle Education Center for the exclusive attendance of State employees.

PROGRAM DOCUMENTATION: Program user manual(s) and Program installation manual(s).

PROGRAMS: Software products owned or distributed by the Contractor, which the State has ordered under this Agreement. "Programs" also includes Program Documentation and any Program Updates acquired through Technical Support.

PUBLIC TRAINING EVENT (PUBLIC EVENT): Training courses offered by Oracle University at Oracle University locations.

SFS: An integrated statewide financial system to be used by various New York State agencies, which includes, without limitation, the statewide Financial Management System ("NYFMS") which will use standard functionality with integrated third party products capable of (i) providing a single interface to the new Central Accounting System ("FOCAS") being developed by the Office of the State Comptroller and (ii) integrating with agency-specific financial systems where necessary.

SERVICES: Technical Support, Training, Installation, and Consulting Services provided under this Agreement.

STATE: OCIO/OFT, acting on behalf of the State of New York, for the acquisition of Programs and Services for the SFS. "State" shall also refer to the Authorized Contract Users, unless the context indicates otherwise (i.e., SFS- specific terms).

SUPPORTED PROGRAM LICENSE: Programs for which the Contractor offers Technical Support.

TECHNICAL SUPPORT: Technical support that is provided by the Contractor under this Agreement or under subsequent annual Technical Support renewals.

THIRD PARTY PROGRAMS: Programs designated as third party programs on Exhibit 5 or an Order Form.

TRAINING: The services provided by Oracle University, as set forth in Article VIII.

TRAINING DAY: Any day or portion of a day in which an Oracle University instructor is present for a private or public event for the purposes of training.

UPDATES: Subsequent releases of the Programs, which are generally made available for, Supported Programs, at no additional charge, to current subscribers to Technical Support. Updates shall not include any options or future products, which the Contractor licenses separately. Updates are defined in detail in the Technical Support policies attached as Exhibit 1.

II. DESCRIPTION OF WORK

This Agreement sets forth the terms and conditions governing the State's purchase of and the Contractor's provision of Programs and Services for the SFS and to Authorized Contract Users.

The Programs and Services to be provided and / or offered by the Contractor under this Agreement shall include:

A. Programs and Services Acquired by OCIO/OFT for the SFS

1. **Programs:** set forth in Exhibit 5.
2. **Third Party Programs:** set forth in Exhibit 5.
3. **Services:**
 - Technical Support Services, as set forth in Exhibits 1, and 5.
 - Installation Services, as set forth in Exhibit 7.
 - Advanced Customer Services, as set forth in Exhibit 11
 - Consulting Services, as set forth in Exhibits 8.
 - Training, as set forth in Exhibit 10.

B. Authorized Contract User Programs and Services

1. **Programs:** set forth in Exhibit 6
2. **Services:**
 - Technical Support Services, as set forth in Exhibits 1, 4, and 6.
 - Advanced Customer Services, as set forth in Article VII.
 - Consulting Services, as set forth in Exhibit 9.
 - Training, as provided in Article VIII.

III. CONFLICT OF TERMS / ORDER OF PRECEDENCE

This Agreement shall be deemed inclusive of the following documents which shall be incorporated herein as if set forth at length. Conflicts between these documents shall be resolved in the following descending order of precedence:

- A. **Appendix A Standard Clauses for NYS Contracts**
- B. **Agreement and Exhibits 5, 7, 8, 10, 11 and 14**
- C. **Exhibits 1 – 4, 6, 9,12 - 13**
- D. **All other attachments**

IV. PROGRAMS

The Contractor shall provide the Programs in accordance with the following terms and conditions.

A. Rights Granted and Restrictions

1. SFS Program Licenses

- a. The State's additional rights and restrictions for the specific Programs to be acquired for SFS are set forth in Exhibit 5. Except as set forth in Exhibit 5, these Programs are subject to all terms and conditions set forth in this Agreement.
- b. Purchase of Additional Programs for the SFS: For the SFS, the State may determine that it is in its best interest to purchase other programs of the Contractor to allow it to conform its existing collection of programs to rapidly changing technology. The State's determination for such a purchase or purchases may weigh: (i) the advantages of any evolution in technology that occurs during implementation of the NYFMS and / or SFS; (ii) the identification of the additional needs for the NYFMS or SFS; (iii) the likelihood of achieving workable systems or solutions for attainment of those objectives; and (iv) the

possibility of reducing risk for the overall project by using new technology to isolate and avoid custom-designed components of the system, among other relevant factors. In the event that the State determines to proceed with such an additional purchase, the State will engage in negotiation with the Contractor to add such programs to this Agreement.

2. General License Rights Granted and Restrictions Applicable to all Purchases

The following is applicable to both the licenses acquired by the State, pursuant to Subsection A(1) immediately above, and for individual license purchases by Authorized Contract Users. If an Order is placed by an individual Authorized Contract User, the term "State" shall be deemed to refer to that individual user only.

Upon execution of an Order Form by both parties, the State has a perpetual, royalty free, non-exclusive, license granting it the limited right to use the Programs for its internal business operations subject to the terms of this Agreement including the definitions and rules set forth in the Program Documentation. The State may allow any of its staff, agents and contractors (including without limitation, outsourcers) to use the Programs licensed hereunder, for this purpose. The State may permit its agents, consultants and contractors to use the Programs to the full extent that the State and its employees are allowed to use Programs hereunder. The State is responsible for the compliance of its agents, consultants and contractors with the terms and conditions of this Agreement in their use of the Programs. For Programs that are specifically designed to allow the State's customers, suppliers and the public to interact with it in the furtherance of its governmental operations, such use is allowed under this Agreement.

The Services provided under this Agreement may be related to the State's license to use programs that were acquired under a separate order. The prior agreement referenced in that prior order shall govern the State's use of such programs. Although the State is acquiring Installation Services, Consulting Services and/or Training Services under this Agreement, the State acknowledges that it may acquire Program Licenses separately from Services.

The State may make a sufficient number of copies of each Program for its licensed use. The State may not:

- remove or modify any program markings or any notice of the Contractor's or its licensors' proprietary rights;
- cause or permit reverse engineering (unless required by law for interoperability), disassembly or decompilation of the Programs (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by programs);
- unless required by law or compelled by court order or subpoena, the State shall not disclose to third parties not authorized by it to implement or maintain its systems, results of any Program benchmark test without the Contractor's prior written consent which shall not be unduly delayed if such consent is requested. The foregoing restriction shall not apply to benchmark results of non-Contractor software which accessed the Contractor's Programs or to benchmark results of an overall system, provided such results: (i) are released only as the benchmark results of such non-Contractor software or of the total system and (ii) do not make any reference to Contractor Programs. The State shall notify the Contractor of requests for the release of benchmarking results under the New

York State Freedom of Information Law (FOIL) or applications for court orders or subpoenas and give the Contractor an opportunity to be heard why the requested records should be excepted from disclosure; or

- re-license, rent or lease the Programs or use the Programs for third-party training or commercial time-sharing.

Open source software is developed independently of Contractor and may be governed by a separate license (“open source software”). If the open source software is governed by a separate license, Contractor shall provide a copy of that license in the applicable Program Documentation and the State's license rights and obligations with respect to that open source software shall be defined by those separate license terms and subject to the conditions, if any, therein. Nothing in this Agreement shall restrict, limit, or otherwise affect any rights or obligations the State may have, or conditions to which the State may be subject, under such separate open source license terms.

B. Ownership

The Contractor or its licensors retain all ownership and intellectual property rights to the Programs. Any property or material furnished or provided by the State to the Contractor hereunder is and will remain the property of the State.

C. Prior Licensed Software

1. The State's Prior Licensed Software shall not be extinguished or merged by execution of this Agreement or by unilateral acts of the Contractor.
2. Except as otherwise expressly provided in the relevant Exhibits, the Services provided under this Agreement shall not relate to the Prior Licensed Software, and Prior Licensed Software agreements in effect as of the execution of this Agreement shall govern the State's use of such software.
3. An Authorized Contract User may migrate its Prior Licensed Software to this Agreement subject to the Contractor's migration policies and specific migration matrix attached as Exhibit 3, which shall be updated annually by addenda.

D. Program Documentation

Program Documentation is delivered with the Programs or the State may access the documentation online at <http://oracle.com/contracts>.

E. Permitted License Transfers

1. Upon prior written notice to the Contractor, the following license transfers are permitted under this Agreement, at no cost to the State, unless the license type specifically prohibits such a transfer:
 - a. An Authorized Contract User may transfer Program Licenses within its own entity.
 - b. If an Authorized Contract User is subject to a government reorganization or otherwise mandated by its governing body to convey any of its specific functions to another Authorized Contract User, the Program Licenses used to support the conveyed functions may be transferred to the entity acquiring the transferred functions. The transferor must discontinue its use of the transferred Program.
 - c. If an Authorized Contract User merges with another Authorized Contract User, Program Licenses may be used by the merged entity.

2. One-Time License Transfer: An Agency is permitted a one-time license transfer of Prior Licensed Software and associated Technical Support to another Agency provided that:

- a. The transfer must occur within 5 years of the effective date of this Agreement (i.e., during the term of the unlimited licenses set forth in Exhibit 5);
- b. If the Technical Support has expired, the Technical Support must be reinstated and the back support paid before the transfer;
- c. The transferred programs and support must comprise all the program licenses and technical support on the order under which those programs and the technical support were originally purchased;
- d. The transferring Agency cannot charge any fees for the transferred programs or the transfer;
- e. Technical Support for the transferred program must be maintained throughout the term of the unlimited licenses granted under Exhibit 5 or the unlimited licenses will terminate and the Certification process will begin; and
- f. The Contractor must receive written notice at the time of the transfer detailing the Programs and Technical Support transferred and signed by the transferor and transferee Agencies.

The Contractor will not charge any fees for the one-time transfer.

Nothing in this section (E) shall be deemed to relieve an Agency or the transferee entity of the obligation to use a Program in accordance with the terms and conditions of this Agreement and all applicable Order Forms placed hereunder, including without limitation, limiting usage of a Program to the quantity and license type for which such Program is licensed.

F. Disaster Recovery

The State shall be entitled to use and copy the Programs and related Documentation for archival backup and disaster recovery purposes and shall have the rights under "Cold", "Warm" or "Hot" Backup, as defined below, to initiate disaster recovery testing on such backup systems for up to four times, not exceeding two days per testing, in any calendar year at no charge other than as set forth below:

A "Cold Backup" is a backup copy of the Programs, which is retained on the Contractor's software media only. In the event of failure of a primary machine, the State may download the Programs from the Contractor's website or it may use the software media to load the Contractor's Programs on a second machine of the Authorized User of the same hardware/operating system combination. There is no additional fee for maintaining a Cold Backup.

A "Warm Backup" is a backup copy of the Contractor's Program, which is loaded on a machine and which is operated only in the event of a failure of the primary machine. In the event of a failure of the primary machine, the secondary machine is used to run the Programs. There is no additional fee for maintaining a Warm Backup.

A "Hot Backup" is a copy of the Programs that is loaded on a machine and operated simultaneously with the primary machine. No processing of data or applications takes place on the backup machine. In the event of a failure of the primary machine, all processing is switched to the backup machine in real time. The fee for a Hot Backup is 25% of the contract price of the primary Program and/or Technical Support.

G. Platform Migration

The State may elect to change the technical infrastructure including the hardware, operating system, and database management system, to another platform supported by the Contractor. If the State is current on Technical Support, the State may access the Updates available to use the Programs on the new platform at no additional charge and with no amendment to the terms and conditions set forth herein.

V. PROGRAM DELIVERY

Upon execution of this Agreement for Programs for the SFS or upon execution of an Order Form for Programs for Authorized Contract Users, the Contractor shall make available the current version of the Programs purchased.

A. For the SFS

Notwithstanding anything in this Agreement to the contrary, Exhibit 5 attached to this Agreement specifies the Programs that the Contractor shall make available to the State for electronic download at the electronic delivery web site located at the following Internet URL: <http://edelivery.oracle.com>. Through the Internet URL, the State can access and electronically download to its location the Programs and Program Documentation listed in Exhibit 5, which are currently available in production release as of the execution of this Agreement.

The Contractor will deliver the tangible media on the particular hardware/operating system combination(s) listed in Exhibit 5 to the address specified by the State. Each media pack consists of 1 copy of the software media and 1 set of Program Documentation (in the form generally available) for each Program included in the media pack. The State agrees to pay applicable media and shipping charges. The applicable shipping terms for the delivery of tangible media are: FCA Shipping Point, Prepaid, and Add. The State acknowledges that the Contractor's delivery obligation under this Agreement for the Programs listed in Exhibit 5 is met by the provision of the electronic delivery web site URL.

Provided the State continuously maintains Technical Support, it may continue to download the Programs and related documentation for the Programs licensed listed in Exhibit 5 at the electronic delivery website. Please be advised that not all programs are available on all hardware/operating system combinations. For current program availability please check the electronic delivery web site.

The State acknowledges that, unless otherwise provided for in this Agreement, it accepts responsibility for (i) its system configuration, design and requirements, (ii) the selection of the Programs to achieve the State's intended results, and (iii) modifications, changes or alterations to the Programs.

The State further acknowledges that it has had an opportunity to review the Program Documentation, understand the functionality of the Programs (including the representations made by the Contractor in Exhibit 13) and their ability to work with the State's systems and to support SFS, and that the State has made its own evaluation in deciding to license the Programs.

B. For the Authorized Contract User

Notwithstanding anything in this Agreement to the contrary, an Order Form signed by both the Contractor and the Authorized Contract User shall specify the Programs that the Contractor shall make available to the Authorized Contract User for electronic download at the electronic delivery web site located at the following Internet URL:

<http://edelivery.oracle.com>. Through the Internet URL, the Authorized Contract User will be able to access and electronically download the Programs and Program Documentation listed in the relevant Order Form, which are then currently available in production release.

Unless otherwise agreed to by the Authorized Contract User and the Contractor, the Authorized Contract User shall be responsible for installation of the Programs.

Provided the Authorized Contract User continuously maintains Technical Support, it may continue to download the Programs and Program Documentation licensed under this Agreement at the electronic delivery website.

The Authorized Contract User acknowledges that, unless otherwise provided for in this Agreement, it accepts responsibility for (i) its system configuration, design and requirements, (ii) the selection of the Programs to achieve its intended results, and (iii) modifications, changes or alterations to the Programs.

Not all Programs are available on all hardware/operating system combinations. The Contractor will deliver the tangible media on the particular hardware/operating system combination(s) listed in section A in the Order Form to the address specified by the Authorized Contract User on its purchasing document. Each media pack consists of the current production release as of the effective date of the Order Form for 1 copy of the software media and 1 set of Program Documentation (in the form generally available) for each program included in the media pack. The Authorized Contract User agrees to pay applicable media and shipping charges. The applicable shipping terms for the delivery of tangible media are: FCA Shipping Point, Prepaid, and Add. The Authorized Contract User acknowledges that the Contractor's delivery obligation is met by the provision of the electronic delivery web site URL.

VI. TRIAL PROGRAMS

The State may order trial programs, or the Contractor may include additional programs with the State's order, which it may use for trial, non-production purposes only at no cost. The State may not use the trial programs to provide or attend third party training on the content and/or functionality of the programs. The State has 60 days from the delivery date to evaluate these programs. If the State decides to use any of these programs after the 60-day trial period, it must obtain a license for such programs from the Contractor or an authorized distributor. If the State decides not to obtain a license for any program after the 60-day trial period, it will cease using and will delete any such programs from its computer systems. Programs licensed for trial purposes are provided "as is" and the Contractor does not provide technical support or offer any warranties for these programs.

VII. CONSULTING SERVICES

A. General

The allocation of ownership and license rights to Contract Deliverables shall be the Joint Property (as defined below) of both parties. Upon payment of all fees due for the applicable Contract Deliverable, the Contractor grants to the State a non-exclusive, non-assignable, royalty free, perpetual, internal-use license to use Oracle Works (as defined below) that are embodied in the Joint Property.

1. "Contract Deliverables" shall mean those deliverables developed by the Contractor solely for the State in the performance of Exhibits 8 and 11 or the applicable Order Form, except for any Oracle Works (as defined below).
2. "Oracle Works" shall mean: (a) anything provided by or on behalf of the Contractor from a repository; (b) any software code generated by computer aided software engineering (CASE) tools; (c) any tools, interfaces, and utilities developed by or on behalf of the Contractor; and (d) any derivative works of (a), (b), or (c) above. Nothing in this section shall be construed to grant, amend, or modify any license for any Programs or Documentation owned or distributed by the Contractor.
3. "Joint Property" shall mean the Contract Deliverables which are those deliverables developed using Consulting Services and shall be owned jointly by the Contractor and the State; Joint Property does not include any Oracle Works (as defined above). The Contractor and the State agree that each party jointly shall own the copyright interest in the Joint Property and that each party may freely use, share, license or sub-license the Joint Property without requiring the approval of the other party, and shall have no duty of accounting to the other party for use of the Joint Property.

The Contractor retains all right, title and interest, including all copyrights, in any Oracle Works and Programs. Any property or material furnished by the State to the Contractor hereunder is and will remain the property of the State.

B. For the SFS

1. Installation Services

The Installation Services will be provided in accordance with Exhibit 7.

2. Advanced Customer Services (ACS)

The Advanced Customer Services will be provided in accordance with Exhibit 11.

3. Other Consulting Services

The staff augmentation services will be provided in accordance with Exhibit 8

C. For Authorized Contract Users

Consulting Services may be acquired by Authorized Contract Users, at the rates set forth in Exhibit 9, from the Contractor separately from Programs licenses and other Services. Authorized Contract Users may acquire either Programs or Consulting Services without acquiring the other; provided however, that if an Authorized Contract User desires to purchase Consulting Services or Training it must comply with the restrictions set forth in Article VII(C)(7) below. The Authorized Contract User and the Contractor shall define and agree to the Consulting Services to be performed in a statement of work in advance of the Services start date and order such Services using the Order Form. Consulting Services provided hereunder are for the Contractor's Programs only.

1. Consulting Services may be ordered at the Authorized Contract User's option and subject to the Contractor's acceptance.

2. The Contractor shall provide Consulting Services on a time and materials ("T&M") basis for actual time spent performing the Services.
3. The Order Form and the Statement of Work will specify the:
 - a. Scope of work to be performed;
 - b. Acceptance criteria;
 - c. Number of hours to be worked by the Contractor's resources;
 - d. Hourly rate for each Contractor employee;
 - e. Any other term or condition mutually agreed upon that may be necessary for the implementation of the task order.
 - f. Each Order Form and statement of work must be signed by authorized representatives of the parties.
4. Any request for any change in Consulting Services must be in writing; this includes requests for changes in project plans, scope, specifications, schedule, designs, requirements, service deliverables, software environment or any other aspect of the order. Contractor shall not be obligated to perform tasks related to changes in time, scope, cost, or contractual obligations until the Authorized Contract User and the Contractor agree in writing to the proposed change in an amendment to the order.
5. The Contractor shall maintain an accurate and complete time tracking mechanism for all Consulting Services performed, identifying the actual time utilized to complete the Services and the name and title of the individual(s) who performed Services. Upon completion of the requested work, Contractor shall present Authorized Contract User with an itemized invoice for services rendered.
6. Unless otherwise agreed to by the parties, all Consulting Services performed by the Contractor shall be done at a site designated by the Authorized Contract User.
7. Consulting Services may not exceed twenty (20%) percent of the total order price for Programs and Technical Support. "Total order price" shall be defined as the aggregate purchase order amount for Programs and Technical Support placed by the Authorized Contract User under this Agreement in a twelve month period. Consulting services which exceed twenty (20%) percent may be procured competitively using the New York State Office of General Services Consulting, Systems Integration and Training mini-bid process or another procurement process selected by the Authorized Contract User.

D. Executive Law – Article 15-A

In accordance with the provisions of Article 15-A of the New York State Executive Law, the Contractor agrees to make good faith efforts to meet the established goals of 15% for minority business enterprises (MBE) participation and 5% for women-owned business enterprises (WBE) participation. The Contractor agrees to comply with all requirements, rules and regulations outlined in Article 15-A and Appendix A. The MBE / WBE policy and requirements are set forth in Appendix B.

VIII. TRAINING / EDUCATION

A. For the SFS

Oracle University Training will be provided in accordance with Exhibit 10.

B. For the Authorized Contract Users

From the execution of this Agreement until the first anniversary of the execution of this Agreement, the State may purchase Public Instructor Led Training at a fifteen percent

(15%) discount off the Oracle University Price List in effect at the time the State places the student registration for the training. The Price List is posted at www.oracle.com/education. This discount may not be used in conjunction with any other discount or special promotion offered by Oracle University. For annual periods subsequent to the time period set forth above, Oracle University agrees to negotiate discounts off its then-current price lists.

IX. TECHNICAL SUPPORT

A. For purposes of this Agreement, technical support consists of annual technical support services the State orders for the Programs. If ordered, annual technical support (including first year and all subsequent years) is provided under the Contractor's technical support policies in effect at the time the services are provided. The technical support policies, incorporated in this agreement, are subject to change at the Contractor's discretion; however, the Contractor will not materially reduce the level of services provided for supported programs during the period for which fees for technical support have been paid. The State should review the policies prior to entering into the ordering document for the applicable services. The State may access the current version of the technical support policies at <http://oracle.com/contracts>.

Technical support is effective upon the effective date (1) of this Agreement for the Programs listed in Exhibit 5 and (2) of the Order Form, unless otherwise stated in the State's order. If the State's order was placed through the Oracle Store, the effective date is the date its order was accepted by the Contractor.

If the State decides to purchase technical support for any license within a license set, it is required to purchase technical support at the same level for all licenses within that license set. The State may desupport a subset of licenses in a license set only if it agrees to terminate that subset of licenses. The technical support fees for the remaining licenses will be priced in accordance with the technical support policies in effect at the time of termination. The Contractor's license set definition is available in the current technical support policies. If the State decides not to purchase technical support, it may not update any unsupported program licenses with new versions of the program.

B. Technical Support renewal terms (Software Update License & Support – "SULS" or any successor technical support offering to SULS) will be provided in accordance with Exhibits 4, 5 and 6 (Technical Support Renewal / Pricing), as appropriate.

C. Successor Products. If the Contractor makes successor products available for the Contractor's product lines ("New Software") that includes substantially similar functionality and features as a Program for which an State has purchased a Program License ("Old Software"), the Contractor will provide the State with a migration path from the Old Software to the New Software and the right to use the New Software under this Agreement at no additional charge, provided that (i) the State is current on Technical Support for the Old Software; (ii) this right shall only apply to New Software that is available in production release status on the operating system identified by the State at the time of the request; and (iii) the Contractor is currently making available, such migration path from the Old Software to the New Software to all of its other supported customers without additional charge.

If the Contractor does not provide to all of its supported customers a migration path from

the Old Software to the New Software free of additional charge, then the Contractor will provide the State with the right to use only the functionality and features contained in the New Software that is substantially similar to the functionality and features contained in the Old Software. The State shall not have the right to use nor shall it use any additional functionality or features in such New Software. All use of New Software shall otherwise be subject to this Agreement.

The Parties acknowledge that the Contractor offers Lifetime Support for many of its Products; if Lifetime Support is offered for a Product, such Product is not deemed to be discontinued under the meaning of this section.

D. Re-Named Programs. If any Program licensed under this Ordering Document (“Original Program”) is re-named or divided into two or more separate Programs (“Re-Named Program”) and the functionality of the Re-Named Program is and remains the same as the functionality of the Original Program, and the Contractor makes such Re-Named Program generally available at no additional license fees to all of its customers who have maintained Technical Support for the Original Program, then the Contractor shall provide the Re-Named Program to the State for no additional license fees, provided that the Re-Named Program is available in production release and that the State is current on Technical Support for the Original Program pursuant to the Contractor's Technical Support Policies (or reinstated Technical Support for such Program pursuant to the Contractor's then current Technical Support Policies).

E. Reinstatement of Technical Support In the event that Technical Support lapses, upon the commencement of Technical Support a reinstatement fee will be assessed. The reinstatement fee is equal to 100% of the last-paid support fee, prorated from the date Technical Support is being ordered back to the date Technical Support lapsed. Applicable renewal adjustments are applied. Once the reinstatement fee has been assessed, Technical Support for the year following the reinstatement period may be purchased for an additional Technical Support fee as calculated based on how long the Program has been unsupported (“go-forward support fee”). If the lapsed support period is less than 6 months, the go-forward support fee is calculated based on the last-published list Technical Support price less the applicable standard discount in effect at the time of reinstatement. If the lapsed support period is 6 months or greater, the go-forward support fee is calculated based on the last-paid support fee. If support is not reinstated for the entire license set or if support for a subset of licenses from Order Form is reinstated, then the “License Set”, “Matching Service Levels”, and “Pricing following Reduction of Licenses or Support Level” policies will apply. Applicable renewal adjustments are applied to the reinstatement fee and go-forward support fee.

This Section (E) does not change the effect that a lapse in Technical Support will have on the Unlimited Licenses, as set forth in Exhibit 5.

X. SOURCE CODE AND MATERIAL ESCROW

A. Source Code

The State will receive source code to the Programs acquired hereunder to the same extent that other customers of Contractor purchasing those Programs receive such source code. The State is licensed to use the source code contained within or delivered with the Programs in order to use the Programs according to the Program Documentation or the

SFS requirements set forth in Exhibit 13, as applicable. The State will not receive source code to PeopleTools or third party programs.

B. Escrow

The Contractor shall retain in escrow a copy of the source code necessary to support the Programs (not including any Programs for which source code is delivered with such Programs). The escrowed material shall be maintained under an agreement that provides that if Contractor ceases to be in the business of supporting the Programs, the escrow agent shall furnish the State with a copy of the escrowed material that has become unsupported. The State shall pay the escrow agent a nominal fee sufficient to cover the cost of reproduction and distribution of source materials, including reasonable administrative expenses thereto. Any escrowed material furnished under this provision shall be considered licensed subject to the terms of this Agreement and shall be used solely to maintain the Programs. If Contractor replaces its escrow agent with a substitute escrow agent, the State will receive notice of the name and address of the substitute agent.

XI. COMPENSATION / PAYMENTS

A. General

1. The State shall pay the Contractor as set forth herein.
2. Payments shall be made in accordance with New York State Finance Law, Article XI-A, Prompt Payment Law.
3. Pursuant to New York State Tax Law Section 1116, the State is exempt from sales and use taxes. For Federal excise taxes, the State's registration number 1474026K covers tax-free transactions under the Internal Revenue Code.
4. The State and the Contractor shall meet at least once a year, at a mutually agreeable time and place, to discuss the pricing and discounts levels set forth in the Exhibits referenced below and to determine whether any adjustments to those prices and discounts are merited.
5. Reimbursement for travel costs incurred by the State relating to the provision of Services shall not exceed the rates specified by the State for State employees classified as "management confidential" and shall be in accordance with all terms of such specification. Such terms and rates are subject to periodic revision. Current rates are set forth on the website listed below:

<http://www.osc.state.ny.us/agencies/travel/travel.htm>

B. For SFS

The State will not issue purchase orders for the Programs and Services set forth in Exhibits 5, 7, 8, 10, and 11. Following approval by the Comptroller and the Attorney General (as evidenced by their signatures on this Agreement), the signature of the State on this Agreement is the State's binding commitment to purchase those Programs and Services, once delivered, and the State's representation to the Contractor that this purchase has been fully authorized and all funds have been fully appropriated.

1. Program Licenses

- a. Prices and rates for the Licenses for SFS shall be fixed and are set forth in Exhibit 5.
- b. Upon acceptance of the Programs or as otherwise provided by the Agreement, Contractor may invoice for payment. The required payment date shall be thirty (30) calendar days, excluding legal holidays, from the receipt of a proper invoice,

as determined in accordance with State Finance Law §179-f(2) and 2 NYCRR Part 18.

- c. Upon the effective date of this Agreement, the fees due under Exhibit 5 shall be non-cancelable and the sums paid nonrefundable, except as expressly provided in this Agreement.
- d. The fee for the Program Documentation shall be included as part of the fees for Programs.

2. Installation

- a. The fees for the Installation of the Programs by the Contractor shall be as set forth in Exhibit 7.
- b. Upon acceptance of the Installation or as otherwise provided by the Agreement, Contractor may invoice for payment. The required payment date shall be thirty (30) calendar days, excluding legal holidays, from the receipt of a proper invoice, as determined in accordance with State Finance Law §179-f(2) and 2 NYCRR Part 18.

3. Advanced Customer Services

- a. The fees for Advanced Customer Services shall be as set forth in Exhibit 11.
- b. Upon acceptance of the Services or as otherwise provided by the Agreement, Contractor may invoice for payment. The required payment date shall be thirty (30) calendar days, excluding legal holidays, from the receipt of a proper invoice, as determined in accordance with State Finance Law §179-f(2) and 2 NYCRR Part 18.

4. Consulting Services

- a. Fees for the Supplemental Consulting Services are set forth in Exhibit 8.
- b. Upon acceptance of the Services or as otherwise provided by the Agreement, Contractor may invoice for payment. The required payment date shall be thirty (30) calendar days, excluding legal holidays, from the receipt of a proper invoice, as determined in accordance with State Finance Law §179-f(2) and 2 NYCRR Part 18.

5. Training

- a. The fees for Training shall be as set forth in Exhibit 10.
- b. Upon acceptance of the Services or as otherwise provided by the Agreement, Contractor may invoice for payment. The required payment date shall be thirty (30) calendar days, excluding legal holidays, from the receipt of a proper invoice, as determined in accordance with State Finance Law §179-f(2) and 2 NYCRR Part 18.

6. Technical Support

- a. Prices and rates for Technical Support for the Programs shall be as set forth in Exhibits 4 and 5.
- b. The Contractor shall submit an invoice pursuant to Article XX, requesting payment quarterly in arrears for Technical Support provided under this Agreement.
- c. Payment for Technical Support shall be made by the State quarterly in arrears. The required payment date shall be thirty (30) calendar days, excluding legal holidays, from the receipt of a proper invoice, as determined in accordance with State Finance Law §179-f(2) and 2 NYCRR Part 18.

C. For Authorized Contract Users

1. Upon acceptance of Programs or Services or as otherwise provided by the Agreement, Contractor may invoice for payment. The required payment date shall be thirty calendar days, excluding legal holidays, from the submission of a proper invoice, as determined in accordance with State Finance Law §179-f(2) and 2 NYCRR Part 18.
2. The fees due under an Order Form signed by the Authorized Contract User and the Contractor shall be non-cancelable and the sums paid nonrefundable, except as expressly provided therein or in this Agreement.
3. The Authorized Contract User's signature on an Order Form referencing this Agreement and the Authorized Contract User's issuance of a purchase order are its representations to the Contractor that the purchase has been fully authorized and that all funds for the purchase have been fully appropriated.

XII. ACCEPTANCE

Unless otherwise provided by mutual agreement of the State and the Contractor, the State shall have sixty (60) days from the date of delivery to accept all Programs. Failure to provide notice of acceptance or rejection to the Contractor by the end of the period provided for under this clause constitutes acceptance by the State as of the expiration of that period. The State may, in writing, waive the Acceptance Period, or any part thereof, at any time. Contractor may offer the State a free trial of the Licensed Programs. If the State accepts such free trial license for the Program(s) specified in such license, the length of the trial shall count toward the sixty (60) day acceptance period and such trial license will grant to the State the right to examine the Program for at least sixty (60) days (unless the parties thereto agree otherwise). Upon the expiration of such period, the State must either issue a purchase order to Contractor for purchase of the Program in accordance with this Agreement, or forthwith discontinue all use and return the Program to Contractor. The State shall be deemed to have tested the Program to its satisfaction and accepted the Program upon its issuance of the purchase order. Notwithstanding the foregoing, this Article does not apply to Incremental Licenses purchased by the State, which are accepted upon delivery.

XIII. PAYMENT INVOICES

A. The Contractor shall submit invoices for payment for the Programs and Services (hereinafter "Payment Invoices").

B. All payment Invoices shall include, at a minimum, the following terms:

1. Delivery on official form of the Contractor;
2. Name, Address and Remittance Address of the Contractor if different from that contained in the introductory paragraph of this Agreement;
3. Contract Number (as assigned by the State for this Agreement);
4. A description of the Programs or Services for which the Contractor requests payment;
5. Total amount to be invoiced.

C. Payment Invoices for Consulting Services additionally shall identify the Order Form for which the Contractor submits the Payment Invoice, and shall include, in the Order Form and supporting documentation:

1. Name and title of each member of the Contractor's staff (or subcontractor, if approved by the State) who performed Services in accordance with the Order Form;
2. The dates the Contractor (or subcontractor, if approved by the State) performed the services;
3. Accurate number of hours that were worked by the Contractor's staff members (or subcontractor, if approved by the State) on the Order Form's requirements;
4. Applicable hourly rate to be paid for each Contractor's staff member (or subcontractor, if approved by the State), pursuant to the Consulting Rate Schedule;
5. Total amount to be paid for each Contractor's staff member (or subcontractor, if approved by the State);
6. Total amount to be paid to the Contractor for the work that was performed under the Order Form.

D. The costs and prices submitted in Payment Invoices shall be in accordance with the relevant Exhibit, as applicable.

E. The Contractor shall submit all Payment Invoices to the designated payment office for this Agreement, which shall be, unless the Contractor receives written notification to the contrary, the following:

For SFS: Cindy Pullman
 NYFMS Project
 4 Harriman Campus Rd; Suite 210;
 Albany. NY 12206

For Authorized Contract Users: the Invoices will be submitted where indicated on the Order Form.

F. The State agrees that it has not relied on the future availability of any programs or updates in entering into the payment obligations arising under this Agreement; however, (a) if the State orders SULS for programs, the preceding sentence does not relieve the Contractor of its obligation to provide Updates under this Agreement or the relevant Order Form, if-and-when available, in accordance with the Contractor's then current Technical Support Policies, and (b) the preceding sentence does not change the rights granted to the State for any program licensed under this Agreement or the relevant Order Form, per the terms of this Agreement and/or the Order Form.

G. The Contractor may lower its prices for any Program or Services provided under this Agreement at any time over the term with simple notice to the State. Notwithstanding anything to the contrary in the Order of Precedence, the Contractor may agree to lower prices at any time on any Order Form under this Agreement.

XIV. WARRANTY

A. Title and Ownership Warranty Contractor warrants that it possesses (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver perpetual or term license rights to the Programs. Contractor shall be solely liable for any costs of acquisition associated therewith. Notwithstanding any language to the contrary in this Agreement, Article XVI ("Intellectual Property Indemnification") of this Agreement states the State's and

Authorized Contract User's exclusive remedy and the Contractor's entire liability for any breach of this particular warranty.

B. General Program Warranty Programs offered shall be a current production release. Contractor warrants that the Programs will perform in all material respects as described in the Program Documentation for one (1) year from the date of acceptance. The Authorized Contract User must notify the Contractor of any Program warranty deficiency within one (1) year after acceptance.

C. Specific Warranty for SFS Programs Acquired at the Effective Date of this Agreement For Programs acquired by OCIO/OFT for SFS at the time of the execution of this Agreement, Contractor warrants that the Programs will perform in all material respects as described in the Documentation and in accordance with the Contractor's response to the functional and technical requirements attached as Exhibit 13 for eighteen (18) months from the date of acceptance. The State must notify the Contractor of any Program warranty deficiency within eighteen(18) months after acceptance.

D. Virus Warranty Contractor represents and warrants that prior to delivery Contractor shall use commercially reasonable methods to test and protect the Programs against viruses and other harmful elements designed to disrupt the orderly operation of, or impair the integrity of data files resident on, any data processing system. Contractor represents and warrants that it will not deliver Programs that contains any known virus. Contractor will also maintain a master copy of the appropriate versions of the Programs, free of viruses. If the Authorized Contract User believes a virus may be present in the delivered Programs, then upon its request, Contractor will provide a master copy to the Authorized Contract User for comparison with and correction of its copy of the Programs.

E. No Hard Stop / Passive Licensing Monitoring Unless the State is otherwise specifically advised to the contrary in writing at the time of order and prior to purchase, the Contractor hereby warrants that either: (1) the Programs do not and will not contain any computer code that would disable the Programs 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 the Contractor to access the Program to cause such disablement or impairment (sometimes referred to as a "trap door" device); or (2) if a Program does contain any such computer code, such computer code shall not be enabled.

F. Date/Time Warranty The Contractor represents that during the term of this Contract, including any extension or renewal hereof, the Programs shall, when used in accordance with the Program Documentation, be able to accurately process (including, but not limited to, calculating, comparing, and sequencing) date/time data transitions, including leap year and daylight savings time calculations.

G. Services Warranty Contractor warrants that that the Services will be provided in a professional manner in accordance with industry standards. The State must notify Contractor of any Services warranty deficiencies within ninety (90) days from performance of the Services that gave rise to the warranty claim.

H. Survival of Warranties All warranties contained in this Contract, which have not expired by their terms, shall survive the termination of this Contract.

I. NO IMPLIED WARRANTIES TO THE EXTENT PERMITTED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

J. THE CONTRACTOR DOES NOT WARRANT OR GUARANTEE THAT THE PROGRAMS WILL BE ERROR FREE OR OPERATE WITHOUT INTERRUPTION OR THAT CONTRACTOR WILL CORRECT ALL PROGRAM ERRORS. The Contractor is not obliged to develop error corrections or Updates for the State's benefit but, in the event such corrections or updates are made generally commercially available by the Contractor at no additional charge, Contractor shall provide them to the State at no additional charge provided that the State is a current subscriber to Technical Support. The State acknowledges that the Programs have not been prepared to meet its individual requirements; it is the State's responsibility to ensure that the facilities and functions described in its specification meet its requirements, and the State is solely responsible for results obtained from its use of the Programs.

K. FOR ANY BREACH OF THE ABOVE WARRANTIES, THE STATE'S AND THE AUTHORIZED CONTRACT USER'S EXCLUSIVE WARRANTY REMEDY, AND THE CONTRACTOR'S ENTIRE WARRANTY LIABILITY, SHALL BE: (A) THE CORRECTION OF PROGRAM ERRORS THAT CAUSE BREACH OF THE WARRANTY, OR IF THE CONTRACTOR CANNOT SUBSTANTIALLY CORRECT SUCH BREACH IN A COMMERCIALY REASONABLE TIME AND MANNER, THE AUTHORIZED CONTRACT USER MAY END ITS PROGRAM LICENSE AND RECOVER THE FEES PAID TO THE CONTRACTOR FOR THE PROGRAM LICENSE; OR (B) THE REPERFORMANCE OF THE DEFICIENT SERVICES, OR IF THE CONTRACTOR CANNOT SUBSTANTIALLY CORRECT A BREACH IN A COMMERCIALY REASONABLE TIME AND MANNER, THE AUTHORIZED CONTRACT USER MAY END THE RELEVANT SERVICES AND RECOVER THE FEES PAID TO THE CONTRACTOR FOR THE DEFICIENT SERVICES.

XV. INDEMNIFICATION AND LIABILITY

A. The Contractor shall be fully liable for any act or omission of the Contractor, its employees, subcontractors and agents, and shall fully indemnify and hold harmless the State from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or tangible personal property caused by fault or negligence of Contractor, its employees, subcontractors or agents arising from the Contractor's performance of this Contract, **without limitation**; provided, however, that the Contractor shall not be obligated to indemnify the State for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the State or the acts of third parties, other than those provided by the Contractor to perform under the Agreement. In connection with the foregoing, the State shall give Contractor: (i) prompt written notice of any action, claim or threat of 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. This Article does not apply to any claims, suits, actions, damages and costs arising from damage to "intangible personal

property,” which includes documentation, software, data, or data files that are in electronic format.

B. Except as set forth in Articles XV(A) and XVI, the limit of liability shall be as follows:

1. Contractor’s liability for any damages arising out of, or related to this Contract, whether in contract, tort or otherwise, shall in no case exceed direct damages in: (i) an amount equal to 1.5 times the charges specified in the purchase order for the Programs and Services, or parts thereof forming the basis of the State’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.
2. Notwithstanding the above, neither the Contractor nor the State 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 State, the Contractor, or by others.

XVI. INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION

A. The Contractor shall indemnify, defend and hold the State harmless, without limitation, from and against any and all damages, expenses (including reasonable attorneys' 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, or of any copyright, trademark, trade secret or intellectual property right with respect to the Programs or the Services deliverables (collectively referred to as “Materials”), provided that the State shall give the Contractor:

1. Prompt written notice of any action, claim or threat of infringement suit, or other suit;
2. Sole control over the settlement or defense of such action, claim or suit at the Contractor's sole expense;
3. Reasonable assistance in the defense of any such action at the expense of the Contractor.

B. The Contractor shall not be obligated to indemnify that portion of a claim or dispute which is based upon the State’s:

1. Modification or alteration of the Materials; or
2. Use of the Materials outside the scope of use identified in this Agreement; or
3. Use of a version of Program which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Program which was available to the State at no additional cost, if Contractor has provided notification to the State of such infringement claim; or
4. Use of the Programs in combination with other programs, software or services not furnished by the Contractor, unless such use has been otherwise permitted in writing by the Contractor; or
5. Use in other than the specified operating conditions and environment as specified in the Program Documentation or as otherwise agreed to by the Parties.

Additionally, Contractor will not indemnify the State to the extent that an infringement claim arises out of any information, design, specification, instruction, software, data, or material furnished directly by the State.

C. If the Contractor believes or it is determined that the use of the Materials or parts thereof may violate someone else's intellectual property rights or may be or is enjoined for any reason, the Contractor shall at its own expense and option, choose to either modify or replace Materials to be non-infringing (while substantially preserving its utility and functionality; provided, however, that unless otherwise agreed by the parties the utility and functionality may not be materially diminished) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, the Contractor may end the license for, and require return of, the applicable Materials and refund any fees OSC may have paid for it.

This Article XVI constitutes the State's sole and exclusive remedy for any infringement claims or damages.

XVII. CONFIDENTIALITY AND NON-DISCLOSURE

A. As used in this Section, "Disclosing Party" means the State when disclosing its Confidential Information (defined below) to the Contractor, or the Contractor when disclosing its Confidential Information to the State, and "Receiving Party" means the State when receiving disclosure of Confidential Information from the Contractor, or the Contractor when receiving disclosure of Confidential Information from the State. "Confidential Information" means all confidential information disclosed by a party (the "Disclosing Party") to the other party/another party (the "Receiving Party") after the effective date of this Agreement including, without limitation, information relating to the Disclosing Party's operations, processes, plans or intentions, know-how, design rights, trade secrets or business affairs. Confidential Information shall be clearly marked as "confidential," "proprietary," "restricted" or some similar designation. Except as provided in this Agreement and specifically in clause (C) hereunder, the Receiving Party further agrees that any Confidential Information obtained by the Receiving Party from the Disclosing Party, its agents, subcontractors, officers, 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 Disclosing Party hereunder, will not be divulged to any third parties. The State acknowledges that the source code to the Programs and the Program Documentation are Confidential Information of Contractor.

B. The Receiving Party:

- i. may not use any Confidential Information for any purpose other than in accordance with, and in the performance of its obligations under this Contract;
- ii. may not disclose any Confidential Information to any person except with the prior written consent of the Disclosing Party or in accordance with (c) below; and
- iii. shall make every reasonable effort to prevent the use or disclosure of Confidential Information.

C. The Receiving Party may disclose information, which would otherwise be Confidential Information, if and to the extent that:

- i. it is required by law (such as the New York State Freedom of Information Law);
- ii. the information has come into the public domain, otherwise than through (a) a breach of this Article XVII by the Receiving Party, (b) a third party's breach of any duty of confidentiality owed to the Disclosing Party of which the Receiving Party was aware, or (c) a violation of law;

- iii. it was in the Receiving Party's lawful possession prior to the disclosure and had not been obtained by the Receiving Party either directly or indirectly from the Disclosing Party;
- iv. it is required by existing contractual obligations of which the Disclosing Party is aware;
- v. it is independently developed by the Receiving Party without reliance on the Confidential Information;
- vi. it is required by any securities exchange or regulatory or governmental body to which it is subject or by judicial process;
- vii. it is otherwise obtained under the Freedom of Information Law or other applicable New York State laws or regulations; or
- viii. the disclosure is to its professional advisers, auditors or banker; or to any of its directors, other officers, employees and sub-contractors (a "Recipient") to the extent that disclosure is reasonably necessary for the purposes of this Agreement.

D. The Contractor will comply with NY Gen. Bus. Law sec. 899-aa to the extent that the Contractor is required to maintain computerized data which includes private information which the Contractor does not own in order to perform the Services. See Gen. Bus. Law sec. 899-aa(4).

XVIII. EMPLOYEES, SUBCONTRACTORS AND AGENTS

A. At the State's request, Contractor shall provide the State with the resumes of all Contractor's employees, consultants, and Subcontractors who shall perform Services under this Agreement. The State shall have the right to conduct interviews, unless otherwise agreed to by the parties, of all such employees, consultants, or Subcontractors provided such interview occurs before the commencement of Services by the relevant employees, consultants or Subcontractors. The State shall have the right to reject assignment of any Contractor employee, consultant, or Subcontractor to a particular Service by providing the Contractor a reasonable and legally valid basis for such rejection. This Article shall not apply to the provision of Technical Support Services.

1. The Contractor shall notify the State of any subcontractor ("Subcontractor") it intends to use in performance of this Agreement.
2. Failure to disclose the intended use of a Subcontractor by the Contractor may, at the sole discretion of the State, result in a disqualification of the Subcontractor, after reasonable notice to the Contractor and a reasonable opportunity to cure.
3. The Contractor shall be fully responsible to the State for the acts and omissions of its Subcontractors in connection with the performance of this Agreement.

B. The Contractor warrants and represents that it now possesses, and will throughout the term of this Agreement possess, at no cost to the State, necessary qualifications, licenses, and permits to perform its obligations under this Agreement within the jurisdiction where the Programs or Services specified are to be provided or performed.

C. All employees of the Contractor, or of its Subcontractors, who shall perform Services or provide Programs under this Agreement, shall possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the Programs or Services specified are to be provided or performed and shall be legally entitled to work in such jurisdiction if it is within the United States. To the best of Contractor's

knowledge, and without duty of inquiry on Contractor's part, all persons, corporations, or other legal entities whose Programs or Services are provided under this Agreement shall comply with all applicable Federal and State laws concerning employment in the United States.

XIX. SUSPENSION OF WORK

A. Notwithstanding any other provision of this Agreement, the State reserves the unconditional right (subject to all applicable Federal and State laws and regulations) to stop any Consulting Services performed under Article VII or an Order Form, or any portion thereof, and/or immediately remove any or all of Contractor's and Subcontractor's staff from the State's premises, for the State's convenience.

B. The State may also stop the Consulting Services by issuing a "Stop Work Order", at any time that it deems the Contractor to be unable or incapable of performing the Consulting Services in accordance with this Agreement. If a Stop Work Order is issued, the State shall have the right to arrange for the completion of the Consulting Services in such manner as it may deem advisable, subject to the intellectual property rights of the Contractor and its licensors and subject to the license rights granted under this Agreement. The Stop Work Order shall include:

1. A description of the Consulting Services to be suspended;
2. Instructions concerning the Contractor's issuance of further orders for Programs, materials, or other Programs or Services;
3. Guidance to the Contractor on action to be taken on any subcontracts;
4. Other suggestions to the Contractor for minimizing costs.

C. The time period for which the Stop Work Order shall remain in effect shall be for a maximum period of up to 90 days from notice of the Stop Work Order. Promptly after issuing the Stop Work Order, the State shall discuss the Stop Work Order with the Contractor and may, at the State's sole discretion, modify the Order, if the State deems it warranted.

D. Prior to the expiration of the Stop Work Order, the State shall take action to:

1. Terminate the Order Form in whole or in part; or
2. Communicate with the Contractor: (a) the appropriate actions to be taken to resume the Consulting Services, including a definition of the Work to be resumed; and/or (b) the State's requirements for resumption of the Consulting Services, and other pertinent details. The State may, in its sole discretion, cancel the Stop Work Order; or
3. Extend the period of the Stop Work Order, if in the State's sole discretion it is necessary.

E. If the State does not take an action pursuant to subsection (D) within ninety (90) days, the subject matter of the Stop Work Order shall be controlled by the provisions of Article XX.

F. The Contractor shall be entitled to receive payment for undisputed Consulting Services which have been completed prior to the effective date of the Stop Work Order and which have been accepted by State.

XX. BREACH / DISPUTE RESOLUTION

A. Breach. In the event the State is dissatisfied with the Contractor’s delivery, installation or performance of the Programs or Services provided under this Agreement, including but not limited to a breach of this Agreement on the part of the Contractor, the State shall notify the designated Contractor representative in writing (hereinafter “Notice of Default”). In the event the Contractor has any disputes with the State, the Contractor shall notify the designated State representative in writing.

B. Dispute Resolution. If either party notifies the other of such dispute or dissatisfaction, the other party shall then make good faith efforts to solve the problem or settle the dispute amicably, including meeting with the other party’s representatives to diligently attempt to reach a satisfactory result. In the event of a dispute, the parties will continue to fulfill their obligations under the Agreement during this dispute resolution process. The Contractor and the State agree to proceed in a good faith effort to avoid disputes, and resolve any disputes that can not be avoided at the lowest level possible. The parties may mutually agree to use facilitated negotiation as necessary. If the State and the Contractor representatives are unable to resolve the dispute or reach a satisfactory result within twenty (20) days of the “Notice of Default” or written notification, the area of disagreement will be referred to the appropriate executive level within each organization. The appropriate executive level for the State shall be the State Chief Information Officer or his / her designee with the authority to act who shall issue the State’s final decision within thirty (30) days of the original written notification. The Contractor shall issue its final decision and provide such decision by written notification to the State within thirty (30) days of the original written notice.

Except for the breach of payment of fees or infringement of its or its licensors’ intellectual property rights, Contractor shall extend the Dispute Resolution period for so long as the State continues to make reasonable efforts to cure the breach. The State shall extend the Dispute Resolution period for so long as the Contractor continues to make reasonable efforts to cure the breach.

Nothing shall limit either party’s ability to pursue all available legal remedies. If the parties are unable to amicably resolve the dispute within thirty (30) days of the written notice then either party may seek legal or equitable relief in a court of competent jurisdiction in New York State.

XXI. COOPERATION / CONFLICT RESOLUTION BETWEEN CONTRACTORS

A. In connection with the Contractor’s performance of this Agreement, the Contractor shall cooperate in a commercially reasonable manner with OCIO/OFT, the SFS System Integrator consultant and any other contractor(s) or consultant(s) retained by the State to work on the SFS.

B. In the event of conflicts between the Contractor and other consultants or contractors engaged in implementing the Programs or Services or other aspects of SFS or other State work, the Contractor shall submit to the State a timely written explanation of the details of the conflict, including such pertinent facts as may provide the State with a firm basis for understanding the nature of the conflict. The Contractor agrees to proceed in a good faith

effort to avoid disputes, and to resolve disputes with other contractors or subcontractors of the State that can not be avoided.

C. With respect to the conflicts detailed in subsection (B), the State shall have the sole right and authority to direct the involved parties on the appropriate course of action to be taken to resolve the conflict. Both parties reserve the right to pursue all available legal and equitable remedies.

XXII. TERMINATION

The following termination provisions (Article XXII(A) and (B)(1)), are subject to the Dispute Resolution provision (Article XX), to terms of the Technical Support Policies and other provisions of this Agreement. Termination under this Article XXII does not relieve the State of its obligation to pay for Programs or Services delivered by the Contractor under this Agreement.

A. Termination

1. Termination by OCIO/OFT. Only the entity signing this Agreement has termination rights with respect to the Agreement and/or the Programs and Services procured hereunder for SFS.

2. Termination by Authorized Contract User: With respect to the rights of termination set forth in this Agreement, an Authorized Contract User may exercise these rights of termination only with respect to its individual order(s) of Programs or Services. An Authorized Contract User may terminate a Program License or Technical Support Services for Contractor's default, subject to the other terms and conditions of this Agreement. Termination of a Program, Technical Support, Training or Consulting Services by an Authorized Contract User applies to that Authorized Contract User only and applies to that specific Program or Service only and does not terminate the Agreement for other Authorized Users of this Agreement or for other Programs or Services.

3. Termination by Contractor: Contractor may terminate a Program license or Technical Support for the State's default or under Article XVI (Intellectual Property Indemnification), subject to the terms and conditions of this Agreement.

4. Effect of Termination: Termination of this Agreement or any Program or Service shall not limit either party from pursuing other remedies available to it, including injunctive relief.

5. Handling of Programs Upon Termination: If a Program license granted under this Agreement terminates, the Authorized User shall (a) cease using the applicable Programs, and (b) certify to Contractor within one month after termination that Authorized User has destroyed or has returned to Contractor the Programs, Program Documentation and all copies. This requirement applies to copies in all forms, partial and complete, in all types of media and computer memory, and whether or not modified or merged into other materials.

B. Termination Provisions

1. For Cause: This Agreement may be terminated by the State where Contractor becomes unable or incapable of performing, or meeting any requirements or qualifications set forth in this Agreement, 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 State may complete the contractual requirements in any manner it may deem advisable.

2. For Convenience: By written notice, this Agreement may be terminated at any time by the State for convenience upon sixty (60) days written notice without penalty or other early termination charges due. This provision does not waive the State's right to terminate this Agreement for cause or to stop work immediately for unsatisfactory work and is supplementary to those provisions.

3. For Violation of Sections 139-j and 139-k of the State Finance Law: The State reserves the right to terminate this Agreement in the event it is found that the certification filed by the Contractor in accordance with Section 139-k of the State Finance Law was intentionally false or intentionally incomplete. Upon such finding, the State may, at its sole option, exercise its termination right by providing 10 days written notification to Contractor, or providing notice in accordance with other written notification terms in this Agreement.

4. For Violation of Revised Tax Law 5a: The State reserves the right to terminate this Agreement in the event it is found that the certification filed by the Contractor in accordance with revised Tax Law 5a is not timely filed during the term of the Agreement or the certification furnished was intentionally false or intentionally incomplete. Upon such finding, the State may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms in this Agreement.

XXIII. FORCE MAJEURE

Neither party shall be liable for losses, defaults, or damages under this Agreement which result from delays in performing, or inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of this Agreement, due to or because of acts of God, the public enemy, acts of government (including the denial or cancellation of any export or other license, if not caused by the obligated party), earthquakes, floods, strikes, an act of war, hostility, or sabotage; civil strife, fire, electrical, internet, or telecommunication outage that is not caused by the obligated party; or any other cause beyond the reasonable control of the party that was so delayed in performing or so unable to perform provided that such party was not negligent and shall have used reasonable efforts to avoid and overcome such cause. Such party will resume full performance of such obligations and responsibilities promptly upon removal of any such cause. If such event continues for more than ninety (90) days, either party may cancel unperformed services immediately upon written notice. This Article does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or the State's obligation to pay for services provided.

XXIV. NOTICES

Except as otherwise expressly provided in this Agreement, any notice or other communication given pursuant to this Agreement shall be in writing and shall be effective either when

delivered personally to the party to whom intended, or five (5) days following deposit of the same into the United States Postal Service mail (certified mail, return receipt requested, or first class postage prepaid), or upon actual receipt by the intended party if the same is sent by overnight mail service, addressed to the party, at the address set forth in the introductory paragraph of this Agreement. Notices provided to the Contractor shall be provided to Oracle USA, Inc, 500 Oracle Parkway, Redwood City, CA 94055, Attention: General Counsel, Legal Department. Notices provided to OCIO/OFT shall be provided to New York State Office for Technology, State Capitol, ESP, PO Box 2062, Albany, NY 12220, Attention: Counsel.

XXV. CONFLICTS OF INTEREST

The Contractor represents that to the best of its knowledge and belief, this Agreement does not give rise to an actual or potential organizational conflict of interest, pursuant to FAR 9.5, as applicable which would preclude it from performing the work called for in this Agreement. The parties understand and agree that the Contractor's employees and consultants engaged under this Agreement may be called upon during the performance of this Agreement to render advice concerning the Contractor's products and the suitability of the Contractor products to the State's environment; and that the Contractor may offer solicited or unsolicited advice concerning the same. The parties further agree that the Contractor will not be called upon under this Agreement to prepare work statements or specifications for use in competitive acquisitions, or be required to evaluate offers of products competitive with the Contractor's products. The parties do not contemplate that the Contractor will be given access to source selection information or other similar information under this Agreement. During the performance of this Agreement, the parties agree to identify any actual or potential conflicts of interest which may arise, or which may be caused by any additional work hereunder, and to work together to manage, mitigate and avoid any such conflicts of interest in a manner that is mutually agreeable to the parties and consistent with applicable laws and regulations.

XXVI. REPORTS

A. Monitoring Contract Performance. The Contractor shall electronically provide the State with verified semi-annual reports in the format required by the State showing the dollar volume of any and all sales under this Agreement for the prior six-month period. Said report shall include a break out of participation by individual Authorized Contract Users. Reports shall be delivered within thirty (30) days of the close of the semi-annual period. Semi-annual periods will end on December 31st and June 30th. If the contract period begins or ends in a fractional portion of a reporting period only the actual contract sales for this fractional period should be reported in that semi-annual report.

B. State Consultant Services Reporting. Chapter 10 of the Laws of 2006 amended certain sections of State Finance Law and Civil Service Law to require disclosure of information regarding contracts for consulting services in New York State. The required forms are located at <http://www.osc.state.ny.us/agencies/gbull/g-226.htm>

XXVII. LICENSE AUDIT

Upon 45 days written notice, the Contractor may audit the State's use of the Programs. The Contractor agrees not to audit the State's use more frequently than once annually. The State agrees to cooperate with the Contractor's audit and provide reasonable assistance and access to information during its normal business hours. In the event such audit discloses that the

State exceeds the scope of the permissible use of the licenses for the Programs, the State agrees to immediately cease the impermissible use of such Programs. The State agrees to pay within thirty (30) days of the receipt of written notification and provision of payment invoice pursuant to Article XIII any fees due and owing pursuant to Article XI. The State agrees that the Contractor shall not be responsible for any of the State's reasonable costs incurred in cooperating with the audit. The Contractor shall provide the State with a report of any such audit, and the State shall have the right to provide a written response to the report to the Contractor. All such audit reports and responses to such audit reports shall be considered confidential and subject to the non-disclosure obligations in this Agreement. The State shall be entitled to designate a representative who shall be entitled to participate in such audit.

XXVIII. POLICIES AND SECURITY

A. In performing this Agreement, the Contractor warrants, covenants and represents that it will comply fully with the State's and the applicable Authorized Contract User(s)' rules, procedures and protocols ("Procedures"), including but not limited to physical, facility, documentary, information security and cyber security, provided that such Procedures do not violate any state, local or federal law. The Authorized Contract User shall indicate if there are any applicable Procedures on the Contractor's Order Form set forth in this Agreement. An Order Form shall not be deemed complete unless the Authorized Contract User completes the section entitled "Security Issues." The Authorized Contract User shall make available the relevant Procedures and Contractor shall be responsible for distributing to its representatives and assessing and ensuring compliance. If any part of the Procedures should violate Contractor's Code of Ethics and Business Conduct or Contractor is otherwise unable to comply, Contractor shall notify the Authorized Contract User in writing. The Authorized Contract User shall be responsible for acquiring the necessary approvals for the waiver from the entity that issued the Procedure. The Contractor and the State agree that the Procedures do not modify or amend the terms and conditions of the Agreement.

B. Web Accessibility Policy. Any web-based intranet and Internet information and applications development, or programming delivered pursuant to the contract or procurement will comply with OCIO/OFT Policy P04-002, *Accessibility of New York State Web-Based Intranet and Internet Information and Applications*, and OCIO/OFT Standard S04-001, *Accessibility of New York State Web-Based Intranet and Internet Information and Applications*, as in force as of the date of this Agreement, which requires that state agency web-based intranet and Internet information and applications are accessible to persons with disabilities. Web content must conform to OCIO/OFT Standard S04-001 (as in force as of the date of this contract), as determined by quality assurance testing. Such quality assurance testing will be conducted by the State and the results of such testing must be satisfactory to the State before web content will be considered a qualified deliverable under the contract or procurement.

Notwithstanding the above,

1. This Article XXVIII(B) does not apply to any third-party products.
2. The ability of the Contractor's Programs to meet the aforementioned standards applies only when they are used in accordance with the Contractor's Program Documentation and other written information provided to the State, and provided that any assistive technologies and any other products used with them properly interoperate with them.

3. The Contractor documents its Programs' status in VPATs, located at www.oracle.com/accessibility/vpats.html. Said VPATs list the extent that each Program adheres to Architectural and Transportation Barriers Compliance Board standards set out in 36 CFR Part 1194 (known as 'Section 508'). In some cases, said VPATs also indicate whether the Program meets the WCAG 1.0 'AA' standards, from which Standard S04-001 is largely derived. The State agrees and acknowledges that the classes of Programs listed below may not be fully compliant with Standard S04-001:

- a. For a product with a VPAT that does not list WCAG 1.0 'AA' conformance, then in addition to any standards marked as 'Not Supported' or 'Supported with Exceptions' within the VPAT, the following standards in S04-001 may not be met:
 - i. Summary tags are required for all tables
 - ii DTD is required for all pages;
- b. For a product with a VPAT that does list WCAG 1.0 'AA' conformance, then in addition to any standards marked as 'Not Supported' or 'Supported with Exceptions' within the VPAT, the following standard in S04-001 may not be met: a DTD is required for all pages;
- c. For a Program for which no VPAT is available, then it may be inferred that the Program does not meet Standard S04-001;
- d. In the case of any of 3(a) through 3(c), the State may invoke an exemption, as outlined in Policy P04-002, based on a state agency's independent authority and responsibility to determine what constitutes a fundamental alteration or undue financial and administrative burden.

4. Both parties agree that accessibility standards are likely to change over the lifetime of this Agreement, and agree to mutually evaluate any proposed changes to Standard S04-001, or adoption by the Contractor of newer accessibility standards, and to develop time frames for modifying this provision in light of any changes.

If any Program fails to meet the applicable standards to the extent set out in the Contractor's VPAT, the Contractor will correct the deficiency within a reasonable time of being notified in writing of such deficiency or refund the license fee for the Programs with the deficiency, which together shall be the sole remedies available for breach of the representation herein.

XXIX. INSURANCE

The Contractor shall take out and maintain the following minimum insurance at its expense for the duration of this Agreement covering locations where the Contractor is to perform work on the State's premises:

- A. Workers' Compensation - As required by the statute of states where services are being performed;
- B. Employer's Liability - \$2,000,000 each occurrence;
- C. Comprehensive General Liability Insurance - \$2,000,000 per occurrence/aggregate bodily injury and \$2,000,000 per occurrence/aggregate property damage; and
- D. Automobile Liability Insurance - \$2,000,000 per occurrence, bodily injury and property damage combined.

Nothing in this Agreement shall be deemed to preclude the Contractor from selecting a new insurance carrier or carriers or obtaining new or amended policies at any time, as long as the above insurance coverage and limits are maintained. The Contractor agrees to provide the State with a certificate(s) of insurance evidencing such coverage within a reasonable time of the receipt of a written request for same.

XXX. MISCELLANEOUS

A. Independent Contractor

The parties hereto agree that the legal status of the Contractor or any Subcontractors is that of an independent contractor and in no manner it or they be deemed employees of the State, and therefore, are not entitled to any of the benefits associated with such employment.

B. Export

Export laws and regulations of the United States that apply to the Programs. The State agrees that such export control laws govern the State's use of the Programs (including technical data) and any services deliverables provided under this Agreement, and the State agrees to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). The State agrees that no data, information, program and/or materials resulting from Services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

C. Waiver

The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other subsequent default or breach.

D. Modification of Contract Terms

The terms and conditions set forth in the Agreement and the Exhibits shall govern all transactions by the State under this Agreement. The Agreement and the Exhibits may only be modified or amended upon mutual written agreement of the State Chief Information Officer/Director of the Office for Technology and Contractor.

Notwithstanding any other provision or other unilateral license terms which may be issued by Contractor after the date of Comptroller's approval of this Agreement, and irrespective of whether any such provisions have been proposed prior to entering into this Agreement, or the fact that such other agreement may be affixed to or accompany computer software upon delivery ("shrink wrap"), the terms and conditions set forth herein shall supersede and govern licensing and delivery of all Programs and Services hereunder.

E. Severability

In the event that any provision of this Agreement is held to be invalid and unenforceable, the remaining provisions of the Agreement shall remain in full force and effect.

F. Entire Agreement

This Agreement, the Exhibits and attachments hereto, and the documents incorporated herein constitute the entire agreement between the parties hereto; and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid.

This Agreement shall not be changed, modified or altered in any manner except by an instrument in writing executed by authorized representatives of the Contractor and the State, and approved by the Office of the New York State Attorney General and the New York State Office of the Comptroller.

G. Assignments and Mergers, Acquisitions, Divestitures

The State may not assign this Agreement to another State entity or give or transfer the Programs and/or any Services without the written consent of the Contractor, except as expressly provided herein. Such consent will not be unreasonably withheld. Permitted Transfers of Programs are set forth in Article IV(E). If the State grants a security interest in the Programs and/or any Services deliverables, the secured party has no right to use or transfer the programs and/or any services deliverables, and if the State decides to finance an acquisition of the programs and/or any services, it will follow the Contractor's policies regarding financing which are at <http://oracle.com/contracts>.

Except in the event of a merger, consolidation, acquisition, internal restructuring, or sale of all or substantially all of the assets of the Contractor, the Contractor may not assign this without the State's prior written consent. The Contractor's obligation to perform under this Agreement shall not be affected or impaired by any reorganization, consolidation or merger to which the Contractor is, or may become, a party.

H. Press Releases / Publicity

The Contractor may orally refer to the State or an Authorized Contract User as a customer in sales presentations and activities. Upon written consent from the State or an Authorized Contract User, the Contractor may refer to the State or the Authorized Contract User, as applicable, as a customer in written sales presentations and marketing vehicles.

I. UCITA

The Uniform Computer Information Transactions Act does not apply to this Agreement or orders placed under it.

J. Compliance with Laws

The Contractor shall comply with the laws of the jurisdiction from which it is delivering Programs and Services to the State under this Agreement, provided that such laws are by their terms expressly applicable to the Contractor's delivery of the relevant Programs and Services under this Agreement.

K. Captions

The captions contained in this Agreement are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

