APPENDX E – SAMPLE AGREEMENT

AGREEMENT
BETWEEN:

THE NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

AND

_____

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AGREEMENT BETWEEN
THE NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
AND

This Agreement ("Agreement") is made by and between the **New York State Department of Financial Services** (the "Department") with a place of business at One Commerce Plaza, Albany, New York 12257, and (the "Contractor") with a place of business at

WITNESSETH THAT:

WHEREAS, the Department has issued a Request for Proposal for @@@@, dated $$$$, designated as Bid No. C000**** (hereinafter referred to as the "RFP"); and

WHEREAS, the Contractor has submitted a proposal in response to the Department's RFP, Bid No. C000****; and

WHEREAS, the Contractor is trained and proficient in the field of @@@@;

NOW, THEREFORE, in consideration of the mutual promises, responsibilities and covenants set forth herein, the Department and the Contractor hereby agree as follows:

1. SCOPE OF AGREEMENT

In response to a Request for Proposal dated (the "RFP") issued by the Department, which is attached hereto as Exhibit A, the Contractor submitted a proposal dated (the "Proposal"), which is attached hereto as Exhibit B. These documents are attached for reference purposes only and are not incorporated herein and shall not be part of this Agreement. The Contractor shall provide to the Department the products and services set forth herein.

The Contractor assumes full responsibility for the provision of the products and services made available in this Agreement for the duration of the Agreement. The Contractor shall be so liable even when the Contractor subcontracts the provision of a portion of the products and services. Subcontracting shall be permitted only with the prior written approval of the Department.

2. CONTRACTOR RESPONSIBILITIES

(In accordance with requirements of RFP.)

3. STAFFING

(Optional paragraph - Use only when there are specific staffing requirements. If there are no such specific staffing requirements type in the words "IntentionallyLeft Blank" here)

4. CONSULTANT DISCLOSURE

The requirements of New York State Finance Law Sections 8 and 163 regarding Consultant Disclosure are hereby incorporated into this Agreement. Contractor is required to comply with all requirements thereof as found in the Consultant Disclosure Information and Forms attached hereto as Appendix C, which is incorporated herein by reference and made a part hereof.

5. FEES

The costs, fees and disbursements associated with the provision of products and services by the Contractor shall be determined in accordance with the terms and provisions of Appendix B, a copy of which is annexed hereto and made a part hereof. No Department employee, including the Project Manager named in Section 9, has the authority to request that the Contractor perform any additional work beyond the work authorized or described herein or to incur additional expenses above the amount set forth in Appendix B of this Agreement.

6. TERM

The term of this Agreement shall be five (5) years, beginning on the date of approval of this Agreement by the Office of the State Comptroller. The Contractor and the Department may mutually agree, in writing, to terminate this Agreement at any time. The Department may also terminate this Agreement at any time and for any reason by mailing written notice to the Contractor at least ten (10) days prior to such termination date.

The Department reserves the right to terminate this Agreement in the event it is found that either of the certifications filed by the Contractor in accordance with New York State Finance Law Section 139-k was intentionally false or intentionally incomplete. Upon such finding, the Department may exercise its termination right by providing written notification to the Contractor in accordance with the provisions of Section 9 herein.

The Department shall not incur any costs if it terminates this Agreement, other than those otherwise due to the Contractor for products delivered and services rendered by the Contractor pursuant to the terms and provisions of this Agreement at the time of such termination. Upon any termination, the Contractor shall only be entitled to compensation for products delivered and services rendered up to the date of termination.

In addition, in the event of any violation by the Contractor of any of the terms of this Agreement, the Department may terminate the Agreement without notice and with compensation to the Contractor for fees and expenses rendered only to the date of termination. Any breach of any of the terms of this Agreement by the Contractor will result in immediate and irreparable injury to the Department and will authorize recourse to injunction and/or other specific performance as well as to all other legal or equitable remedies to which the Department may be entitled.

7. EFFECTIVE DATE

This Agreement shall have no force and effect until approved by the New York State Office of the Comptroller.

8. BILLING

The Contractor shall provide complete and accurate itemized statements monthly to be reviewed and approved by the Department. Invoices containing all required information and supporting documentation must be submitted to: New York State Department of Financial Services, Attn. Accounts Payable Unit, One Commerce Plaza, Suite 1850, Albany, NY 12257. Payment by the Department will be made in accordance with the State Finance Law, upon receipt of such statements and upon approval by the Department, in accordance with State procedures and practices. Payment shall be made electronically unless payment by paper check is expressly authorized by the Superintendent of Insurance, in his sole

discretion, due to extenuating circumstances. Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at www.osc.state.ny.us/epay/index.htm, by e-mail at epunit@osc.state.ny.us, or by telephone at 518-474-4032. Contractor acknowledges that it will not receive payment on any invoices submitted under this Agreement if it does not comply with the State Comptroller's electronic payment procedures, except where the Superintendent of Insurance has expressly authorized payment by paper check as set forth above.

No Department employee, including the Project Manager named in Section 9, has the authority to request that the Contractor perform any additional work beyond the work authorized or described herein or to incur additional expenses above the amount set forth in Appendix B of this Agreement.

Reimbursement for the Contractor's travel expenses, lodging, and meal costs shall be made at the New York State rates in effect at the time the costs are incurred. Those rates are currently set forth on the State Comptroller's website at http://www/osc.state.ny.us/agencies/travel/reimbrate.htm. Reimbursement requests shall be made on the State of New York standard voucher, AC-92, which must be obtained from the project manager designated in Section 9 of this Agreement. Reimbursement shall be made in accordance with the guidelines set forth in the Office of State Comptroller Travel Manual, which is currently located on their website at http://www.osc.state.ny.us/agencies/travel/travel.htm. Proper documentation of all costs shall be required as set forth in the Comptroller Travel Manual, except that receipts or other proper proof shall be required for all expenses, including but not limited to: tolls, parking and taxis. Contractor shall not be reimbursed for taxes incurred in the State of New York.

9. NOTICE

_____, or his/her designee, is the project manager and shall represent the Department in all matters affecting the delivery of products and services. The project manager for the Contractor is _____.

Except as provided in Section 17 a. (1), any notice, request, demand, or other communication required or provided for in this Agreement shall be in writing and shall be deemed to have been duly given if delivered in person or mailed in a sealed envelope, postage prepaid, addressed as follows:

To the Department: N.Y.S. Department of Financial Services
25 Beaver Street
New York, NY 10004-2319

With a copy to: Office of General Counsel
N.Y.S. Department of Financial Services
One Commerce Plaza,
Suite 1706
Albany, NY 12257

To Contractor:

Either party may designate another or further address by notice given in accordance herewith.

10. CONFIDENTIAL INFORMATION

In connection with the provision of products and/or services to the Department by Contractor, the Department may disclose to Contractor information that is proprietary or confidential. Any and all Department communications, records, documents, written, oral or electronic communication or other information of any kind shall be deemed and treated as confidential by the Contractor. The Contractor shall not copy, transmit, deliver or communicate in any way to any other person or entity any such communications and/or information without the prior written consent of the Department. The Contractor agrees to use such confidential information solely for the purpose of performing services hereunder for the Department.

The term "confidential information" does not include information that (i) is or becomes generally available to the public other than as a result of disclosure by the Contractor, (ii) is or becomes available to the Contractor on a non-confidential basis from sources other than the Department, provided that such source is not bound by a written confidentiality agreement with the Department, or (iii) was lawfully within the Contractor's possession prior to its being furnished to the Contractor by the Department, provided that the source of such information was not bound by a written confidentiality agreement with the Department, or (iv) is required under applicable law or by deposition, interrogatory, request or demand for information or documents, subpoena, investigative demand, court order or other similar legal process. In such cases the Contractor shall provide the Department with written notice that such information is not deemed confidential. Such notice shall provide the Department sufficient time to seek a protective order or other legal remedy.

All written confidential information (and all copies, extracts or other reproductions in whole or in part thereof) obtained by the Contractor from the Department shall be returned to the Department and have the status of Department work papers (or, with the Department's written permission, shall be destroyed and such destruction certified in writing to the Department by an authorized Contractor representative supervising such destruction). Except as set forth herein, no confidential information shall be retained by the Contractor. The Contractor shall be permitted to retain one copy of internal memoranda and other documents, developed by the Contractor during the term of this Agreement, which contain or refer to confidential information, subject to the confidentiality provisions of this paragraph.

Nothing in this section shall be construed to alter the Contractor's responsibilities under any applicable State Law. Since monetary damages may not be a sufficient remedy with respect to any violation of this section, the Department shall be entitled to specific performance and injunctive relief, in addition to any other remedy.

11. DEPARTMENT PROPERTY

All information and materials received hereunder by the Contractor from the Department are and shall remain the sole and exclusive property of the Department, and the Contractor shall have no right, title, or interest in or to any such information or materials by virtue of their use or possession hereunder by the Contractor.

All intellectual property, created by the Contractor hereunder as a product or as a service to the Department shall be the sole and exclusive property of the Department. The Contractor hereby transfers and assigns to the Department all proprietary and intellectual property rights in such property.

Effective upon their creation pursuant to Section 2 of this Agreement, the Contractor conveys, assigns and transfers to the Department the sole and exclusive rights, title and interest in all documents, electronic databases, and custom programs, whether preliminary, final or otherwise, including all trademarks and copyrights. The Contractor hereby agrees to take all necessary and appropriate steps to ensure that the custom products are protected against unauthorized copying, reproduction and marketing by or through the Contractor, its agents, employees, or subcontractors. Nothing herein shall preclude the

Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under this Agreement in the course of the Contractor's business.

The Contractor grants to the Department a perpetual, nonexclusive, royalty-free, unlimited use license to use, execute, reproduce, display, modify and distribute any pre-existing software, tools or techniques delivered by the Contractor under this Agreement.

Any written reports, opinions and advice rendered by the Contractor shall become the sole and exclusive property of the Department, and the Contractor shall have no right, title, or interest in or to any such information or materials by virtue of their use or possession hereunder by the Contractor.

12. RETENTION OF RECORDS

The Contractor shall make available to the Department all information pertinent to the project, including reports, studies, drawings, and any other data. All original records generated as a result of the project shall be maintained by the Contractor for a period of six (6) years after expiration of the Agreement. Upon request, copies of those records shall be provided to the Department at no cost.

13. CONFLICTS OF INTEREST

The Contractor represents and warrants that it has no conflict, actual or perceived, that would prevent it from performing its duties and responsibilities under the Agreement. The Contractor shall disclose the relationships it has had with insurance companies or other entities regulated by the Department during the two years before the date of this Agreement. During the term of this Agreement the Contractor shall disclose any relationships it proposes to enter into with insurance companies or other entities regulated by the Department. These disclosures must contain all facts material to any actual or potential conflict of interest. Department may consider and approve, in writing, alternative guidelines proposed by the Contractor to redress any actual or perceived conflict of interest only when the Department deems such action appropriate.

14. IRAN DIVESTMENT

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will be developing a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list is expected to be issued no later than 120 days after the Act's effective date, at which time it will be posted on the OGS website.

By entering into this Agreement, the Contractor (or any assignee) certifies that once the prohibited entities list is posted on the OGS website, it will not utilize any subcontractor that is identified on the prohibited entities list. Additionally, the Contractor agrees that after the list is posted on the OGS website, should it seek to renew or extend the Agreement, it will be required to certify at the time the Agreement is renewed or extended that it is not included on the prohibited entities list. The Contractor also agrees that any proposed assignee of the Agreement will be required to certify that it is not on the prohibited entities list before the Department may approve a request for assignment of the Agreement.

During the term of the Agreement, should the Department receive information that a person is in violation of the above-referenced certification, the Department will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then the Department shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The Department reserves the right to reject any request for assignment for an entity that appears on the prohibited entities list prior to the award of the contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the prohibited entities list after contract award.

15. PUBLICITY

The Contractor shall not prepare or release, or cause to be prepared or released, any public notice or announcement concerning this Agreement or performance hereunder. Public notice or announcement includes, but is not limited to, notices published on or in connection with the Contractor's website. The Contractor shall not plan, conduct, or cause to be planned or conducted, or take part in, any news or other conference concerning this Agreement, or work performed pursuant to it, without the Department's prior written approval. The Contractor shall not make public or publicize its relation with the Department, nor use the Department's name, without the Department's prior written approval.

16. RELATIONSHIP

The Contractor is an independent contractor and may neither hold itself out nor claim to be an officer, employee or subdivision of the State, nor make any claim, demand or application to or for any right based upon any different status. No staff member, officer, director or person employed by the Contractor in connection with this Agreement shall be considered or deemed to be an employee of the State of New York or represent him or herself as an employee of the State of New York. *(In appropriate circumstances: Contractor shall not have any direct contact with any insurer or its representative nor purport to bind the Superintendent or the Department without the prior written consent of the Department.)*

17. INSURANCE

a. General Requirements:

1) All insurance policies required under this Agreement shall be issued by insurance companies authorized to conduct business under the laws of the State of New York. They shall be written for the benefit of the People of the State of New York; the New York State Executive Department; the New York State Department of Financial Services; its Superintendents, officers, agents, employees and for the Contractor. Said policies shall be effective until all work required or contemplated by the Agreement has been completed. Policies expiring on a fixed date before completion of the Contractor's duties under this Agreement must be renewed not less than 30 days before such expiration date. No policy shall be changed by endorsement without the knowledge and the written consent of the Department and, in particular, any notice of cancellation by the insurer shall not be effective until 30 days after the said notice is actually received by the Department. Any notice addressed to the Department shall be mailed via certified or registered mail to the address set forth herein.

2) Before commencing work under this Agreement, the Contractor shall furnish to the Department a certificate of insurance naming: the People of the State of New York; the New York State Executive Department; the New York State Department of Financial Services; its Superintendents, officers, agents and employees as additional insureds. Such certificate shall be on forms acceptable to the Department showing that the Contractor has complied with these requirements. The certificates shall provide that the insurance policies shall not be changed or cancelled until thirty (30) days written notice has been given to the Department. In addition, for policies expiring on a fixed date before completion of the Project, certificates showing renewal must be filed not less than 30 days before such expiration date.

b. Liability Insurance:

1) The Contractor shall procure insurance for liability for damages imposed by law, of kinds and in amounts satisfactory to the Department, covering all operations under this Agreement, whether performed by the Contractor or by its subcontractors.

2) Unless otherwise specifically provided for herein, the amounts of such insurance shall be no less than $1,000,000.00 combined bodily injury and property damage single limit per occurrence, and $3,000,000.00 combined in the aggregate.

3) Coverage shall include the following:

(i) Contractor's Liability Insurance (including contractual liability) and Contractor's Protective Liability issued to protect the Contractor from any suits, actions, damages and costs of every name and description, with respect to all duties of the Contractor and its subcontractors, agents or employees under this Agreement and

(ii) Completed Operations/Product Liability Insurance covering liability for damages arising from the Contractor's duties under this Agreement.

c. Workers' Compensation Insurance in such amounts as required by the Department and proof thereof.

1) Contractor shall:

(i) Be legally exempt from obtaining worker's compensation insurance coverage; or

(ii) Obtain such coverage from insurance companies; or

(iii) Be a Workers' Compensation Board-approved self-insured employer or participate in an authorized self-insurance plan.

2) Contractor shall provide one of the following to the Department as proof of compliance with the requirements of the Workers' Compensation Law pertaining to workers' compensation coverage. (ACORD forms are **NOT** acceptable proof of workers' compensation coverage.)

(i) **Form CE-200**, Certificate of Attestation for New York Entities with No Employees and Certain Out of State Entities, that New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is not required, which is available on the Workers' Compensation Board's website (www.wcb.state.ny.us); or

(ii) Certificate of Workers' Compensation Insurance:

(A) **Form C-105.2 (9/07)** if coverage is provided by the contractor's insurance carrier, contractor must request its carrier to send this form to the Department, or

(B) **Form U-26.3** If coverage is provided by the State Insurance Fund, contractor must request that the State Insurance Fund send this form to the Department, or

(iii) Certificate of Workers' Compensation Self-Insurance, **Form SI-12**, available from the contractor's Group Self-Insurance Administrator.

3) All forms shall name the New York State Department of Financial Services, Administration Bureau, Suite 1850, One Commerce Plaza, Albany, NY 12257 as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).

18. LIABILITY

The Contractor assumes all risks in the performance of all its activities authorized by this Agreement. The Contractor hereby covenants and agrees to defend, indemnify and hold harmless the People of the State of New York; the New York State Executive Department; the New York State Department of Financial Services; its Superintendents, officers, agents, employees and assigns against all liabilities, claims, suits, actions, judgments, costs, expenses, demands, losses, damage or injury, arising out of this

agreement, of whatsoever kind and nature including death or injury to person, damage or loss of property, all attorneys' fees and other costs of investigating and defending against such claims, liabilities, losses, damages, expenses, accidents or occurrences. The Contractor shall be responsible for such liabilities that arise at any time prior to termination of this Agreement, whether direct or indirect, and whether caused or contributed to by the Contractor, its contractors, subcontractors, agents, or employees. The Contractor's responsibility under this section shall not be limited to the required or available insurance coverage.

19. DATE/TIME WARRANTY

Contractor warrants that product(s) furnished pursuant to this Agreement shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing and sequencing) transactions, including leap year calculations. If the constituent parts of a product furnished pursuant to this Agreement must perform as a package or system, this warranty shall apply to the products as a system.

Where Contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion; ii) maintenance or support services; iii) data entry or processing; or iv) contract administration services (e.g. billing, invoicing, claim processing), Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to inaccuracy of Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, sequencing) various date/time transitions, including leap year calculations. Contactor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including, but not limited to, the failure or untimely performance of such services.

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

20. FORCE MAJEURE

Neither party shall be held liable for failure to perform its part of this Agreement when such failure is due to fire, flood, or similar disaster; strikes or similar labor disturbances; industrial disturbances, war, riot, insurrection, and/or other causes beyond the control of the parties.

21. WAIVER

No failure or delay on the part of the Department in exercising any right, power or remedy hereunder shall operate as a waiver thereof. No single or partial exercise of any such right, power or remedy shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies provided for herein are cumulative and are not exclusive of any remedies that may be available to any party at law or in equity or otherwise.

22. ENTIRE AGREEMENT

This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter contained herein except as to those matters or agreements expressly incorporated herein by reference. No covenant, representation or condition not expressed herein shall be effective to interpret, change or restrict the express provisions of this Agreement. This Agreement supersedes any and all prior agreements, whether written or oral, relating to the subject matter contained herein. This Agreement shall not be amended, changed or otherwise modified except in writing, signed by both parties.

23. BINDING AGREEMENT

The covenants and agreements contained in this Agreement shall be binding upon the parties hereto and upon their respective executors, administrators, legal representatives, heirs, successors, distributees and assigns. The rights or obligations granted or allocated to the Contractor herein may not be assigned without the prior written consent of the Department.

24. ASSIGNMENT

The Contractor shall not, without the prior written consent of the Department, assign, transfer, convey, or otherwise dispose of this Agreement, or any part thereof, or of its right, title, or interest therein or its power to execute this Agreement or any amendment or modifications hereto to any other person, company, or corporation.

25. SEVERABILITY

In the event any provision of this Agreement is determined to be contrary to law or unenforceable for any reason whatsoever, such determination shall not in any way affect the validity or enforceability of the balance of this Agreement or any other term or condition hereof.

26. APPENDICES

The Contractor, its subcontractors, vendors and agents shall comply with the terms of the following Appendices which are attached to this Agreement, are incorporated by reference herein and which shall be made a part of this Agreement:

Appendix A-	Standard Clauses for all New York State Contracts (including any and all Appendices and Exhibits annexed thereto).
Appendix B-	Price/Fee Schedule
Appendix C-	Consultant Disclosure Information and Forms
Appendix D-	MWBE Requirements and Procedures

The following are attached to this Agreement for reference purposes only and are not incorporated herein and shall not be part of this Agreement:

Exhibit A-	Request for Proposal dated _____, Bid No. _____, issued by the New York State Department of Financial Services (including any and all Appendices and Exhibits annexed thereto)
Exhibit B-	Response to Request for Proposal (including any and all Appendices and Exhibits annexed thereto).

27. EXECUTION

This Agreement may be executed in separate counterparts, which together shall constitute the Agreement of the parties, provided that all of the parties to this Agreement have executed their respective copy of this Agreement.

-----Signature Page Follows-----

Signature Page

Agreement/Contract Number:

Department Certification:

In addition to the acceptance of this Agreement, I certify that original copies of this signature page will be attached to all other exact copies of this Agreement.

Contractor Certification:

In addition to the acceptance of this Agreement, I certify that all information provided to the Department with respect to New York State Finance Law Section 139-k is complete, true and accurate.

NYS DEPARTMENT OF FINANCIAL SERVICES	**CONTRACTOR**
BY: _____	BY: _____
Signature	Signature
_____	_____
Dated	Dated
_____	_____
Printed Name	Printed Name
_____	_____
Title	Title

NEW YORK STATE ATTORNEY GENERAL

BY: (Print Name and Title) _____

(Signature) _____ (Date)_____

NEW YORK STATE OFFICE OF THE STATE COMPTROLLER

By _____

Date _____

CORPORATE ACKNOWLEDGMENT

STATE OF NEW YORK)
) SS:
COUNTY OF)

ON THIS _____ DAY OF _____ 20_____ BEFORE ME PERSONALLY CAME _____ TO ME KNOWN, WHO BEING DULY SWORN, DID DEPOSE AND SAY THAT HE/SHE RESIDES IN _____, THAT HE/SHE IS THE _____ _____OF THE _____ _____, THE CORPORATION DESCRIBED IN AND WHICH EXECUTED THE FOREGOING INSTRUMENT; THAT HE/SHE KNEW THE SEAL OF SAID CORPORATION; THAT THE SEAL AFFIXED TO SAID INSTRUMENT WAS SUCH CORPORATE SEAL; THAT IT WAS SO AFFIXED BY THE ORDER OF THE BOARD OF DIRECTORS OF SAID CORPORATION, AND THAT HE/SHE SIGNED HIS NAME THERETO BY LIKE ORDER.

NOTARY PUBLIC