



NEW YORK STATE  
DIVISION OF HOMELAND SECURITY  
AND EMERGENCY SERVICES  
OFFICE OF COUNTER TERRORISM

FEDERAL GRANT  
PROGRAM ADMINISTRATION

May 31, 2011

Michele Mulloy  
Criminal Justice Policy Analyst III  
NYS Division of Criminal Justice Services  
4 Tower Place  
Albany, NY 12203

**RE: Contract #C182790 – FY09 State Homeland Security Program**

Dear Ms. Mulloy:

Enclosed is a copy of a fully executed MOU. The terms and conditions of the agreement should be carefully reviewed.

As outlined in the agreement, you are required to submit fiscal cost reports and corresponding detailed itemization forms for each month of the contract period or quarterly as described in Appendix C of your MOU. These forms can be downloaded from our website <http://www.dhses.ny.gov/grants>. All forms must be submitted to the **Division of Homeland Security and Emergency Services at 1220 Washington Avenue, State Office Campus, Building 7A, Suite 610, Albany, New York 12242**. Please note that a separate fiscal ledger which accurately details the disbursement and expenditure of these grant funds must be maintained by your office for audit purposes.

The agreement also requires the submission of quarterly progress reports (as outlined in Appendix A1) which describe and document the operation of this project. The quarterly report format has been designed to collect information that is essential in properly evaluating the progress of your program in relation to the goals, objectives, tasks, and performance measures specified in your MOU. These reports must be completed using the E-Grants system. Failure to comply with the provisions of this MOU or to submit the required program progress reports or fiscal reports may jeopardize future funding under this program.

If you have any questions concerning the MOU or should you require technical assistance concerning the operation of your project, please call Steven Sheffer at (518) 242-5108.

Sincerely,

Shelley Wahrlich  
Contracts Manager

Enclosure

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1220 Washington Avenue, State Office Building Campus  
Building 7A – Suite 610  
Albany, NY 12242

MEMORANDUM OF UNDERSTANDING  
Between the  
NEW YORK STATE  
DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES  
And  
NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES  
Contract #C182790  
CFDA #97.067

This is a Memorandum of Understanding (MOU), between the New York State Division of Homeland Security and Emergency Services (DHSES) with offices at Building 7A, State Campus, Albany, New York, and the New York State Division of Criminal Justice Services (DCJS), with offices at 4 Tower Place, Albany, New York regarding the provision of Federal Homeland Security Funding by DHSES to the DCJS. The foregoing are collectively referred to as the "Parties."

WHEREAS, the DHSES is the State Administrative Agency for funding being received from the United States Department of Homeland Security through the FY2009 Homeland Security Grant Program (HSGP); and

WHEREAS, the DCJS has been allotted funding from the FY2009 HSGP, State Homeland Security Program (SHSP) by DHSES to provide consultant services, equipment, and travel expenses associated with Livescan and License Plate Reader projects; now

THEREFORE, the Parties agree to the following terms and conditions:

1. DHSES will sub-allocate funds to the DCJS in the amount of \$1,950,000 from the FY2009 SHSP.
2. The DCJS will utilize the funding to provide consultant services, equipment, and travel expenses associated with Livescan and License Plate Reader projects per the attached budget and work plan.
3. The initial program period of the agreement is August 1, 2009 through July 31, 2012, and will be in accordance with all pertinent state and federal regulations. This period may be extended if funding is approved by the U.S. Department of Homeland Security beyond this period.
4. The DCJS will provide financial (FCRs) and program reports to DHSES, as required by state and federal regulations; and
5. This agreement will commence upon execution by the Parties and may be modified as deemed necessary by the parties to facilitate the plans and purposes of the state's homeland security efforts.

IN WITNESS WHEREOF, the Parties hereto have caused this MOU to be executed as of the date indicated below.

NYS Division of Homeland Security and Emergency Services

By: David Sheppard Date: 16 Mar 11  
F. David Sheppard, Acting Assistant Director

State Agency Certification: "In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract".

GRANTEE:

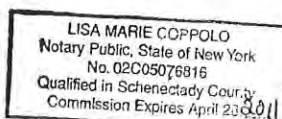
By: Sean M. Byrne Date: 3/14/11  
Name and Title: Sean Byrne, Acting Commissioner

STATE OF NEW YORK)

) ss.  
County of Albany

On this 14th day of March, 2011, before me personally came Sean Byrne, to me known, who being duly sworn, did depose and say that (s)he resides in: New York, that (s)he is the Acting Comm. of the Division of Criminal Justice Services, the Grantee described in and which executed the foregoing instrument; that it was so executed by the authority of the Grantee, and that (s)he signed his/her name thereto by like order.

(Notary)



**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

**PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.**

November, 2010

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

2. **NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. **COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).

4. **WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any

employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. **NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. **INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export

Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. **SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

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

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

its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) **PRIVACY NOTIFICATION.** (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

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

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

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

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

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in

accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl St -- 7<sup>th</sup> Floor  
Albany, New York 12245  
Telephone: 518-292-5220  
Fax: 518-292-5884  
<http://www.empire.state.ny.us>

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business  
Development  
30 South Pearl St -- 2nd Floor  
Albany, New York 12245  
Telephone: 518-292-5250  
Fax: 518-292-5803  
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.**

Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.**

Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.**

If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.**

To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law

Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.



**APPENDIX A-1**  
**New York State Division of Homeland Security and Emergency Services**  
**AGENCY-SPECIFIC CLAUSES**

**A. GENERAL TERMS AND CONDITIONS**

1. This contract (Agreement) is hereby made by and between the Division of Homeland Security and Emergency Services (DHSES), on behalf of the State of New York (State) and the Grantee.
2. Appendix A (Standard Clauses as required by the Attorney General for all State contracts) takes precedence over all other parts of this Agreement.
3. This Agreement incorporates the face pages attached, this Appendix and all of the marked Appendices identified on the face page hereof.
4. Funding for the entire Agreement Period shall not exceed the funding amount specified as "Funding Amount for the Initial Period" on the face page hereof.
5. The period of this Agreement shall be as specified on the face page hereof. Should funding become unavailable, this Agreement may be suspended until funding becomes available. In such event DHSES shall notify the Grantee immediately of learning of such unavailability of funds, however, any such suspension shall not be deemed to extend the term of this Agreement beyond the end date specified on the face page hereof.
6. To modify the Agreement, the parties shall revise or complete the appropriate appendix form(s). Any change in the amount of consideration to be paid, change in scope, or change in the term, is subject to the approval of the NYS Office of the State Comptroller. Any other modifications shall be processed in accordance with DHSES guidelines as stated in this Agreement.
7. The Grantee must meet the program objectives summarized in the Program Work Plan and Special Conditions (Appendix D) to the satisfaction of DHSES in accordance with provisions of the Agreement, relevant laws, rules and regulations, administrative and fiscal guidelines and, where applicable, operating certificates for facilities or license for an activity or program.
8. If the Grantee enters into subcontracts for the performance of work pursuant to this Agreement, the Grantee shall take full responsibility for the acts and omissions of its sub-grantees. Nothing in the subcontract shall impair the rights of the State under this Agreement. No contractual relationship shall be deemed to exist between the sub-grantee and neither DHSES nor the State of New York.
9. If this Agreement exceeds \$50,000, it shall not take effect until it is executed by the parties hereto and approved by both the Offices of the NYS Attorney General and State Comptroller. If this Agreement is \$15,000 or less, it shall not take effect until it is executed by both parties.

If this Agreement ranges in dollar amount from \$15,000.01 to \$50,000, execution is contingent upon the appropriation. If the Agreement utilizes funds appropriated *prior to*

April 1, 2006, it shall not take effect until it is executed by the parties hereto and approved by both the Offices of the NYS Attorney General and State Comptroller. If the Agreement utilizes funds appropriated *on or after* April 1, 2006, it shall not take effect until it is executed by both parties.

10. The failure of a party to enforce a contractual obligation shall not eliminate the other party's obligation to perform such contractual obligation.
11. In the event that any provision of this Agreement is determined to be null and void, all remaining provisions shall continue to be in full force and effect.
12. If applicable, the Grantee agrees to obtain not-for-profit status, a federal identification number, and a charitable registration number (or a declaration of exemption) and to furnish DHSES with this information as soon as it is available.
13. The Grantee agrees, as a material condition of the Agreement, to comply with all applicable provisions of the Hatch Act (5 U.S.C. 1501 et seq.), as amended.
14. The Grantee shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 889-aa; State Technology Law Section 208). The Grantee shall be liable for the costs associated with such breach if caused by the Grantee's negligent or willful acts or omissions, or the negligent or willful actions or omissions of Grantee's agents, officers, employees or sub-grantees.
15. Consistent with the NYS Office of State Comptroller Bulletin No. G-221, all non-governmental (non-profit and commercial) organizations scheduled to receive grant funding from DHSES must comply with Vendor Responsibility requirements.

**B. BUDGET, PAYMENT, REIMBURSEMENT AND REPORTING REQUIREMENTS**

1. The Grantee is not permitted to make any changes to the Agreement budget without the written approval of DHSES. Furthermore, any proposed modification to the Agreement which results in a change of greater than 10 percent to any budget category, must be submitted to NYS Office of State Comptroller for approval.
2. To be eligible for payment, the Grantee shall submit to the DHSES' designated payment office (identified in Appendix C) any appropriate documentation as required by the Payment and Reporting Schedule (Appendix C) and by agency fiscal guidelines, in a manner acceptable to DHSES.
3. DHSES shall make payments and any reconciliation in accordance with the Payment and Reporting Schedule (Appendix C). DHSES shall pay the Grantee for completed, approved projects, a sum not to exceed the amount noted on the face page hereof. The Grantee must not seek or accept reimbursement from any other sources for Grantee costs and services pursuant to this Agreement.
4. Grantee shall provide complete and accurate vouchers to the Agency in order to receive payment. Vouchers submitted to DHSES must contain all information and supporting documentation required by the Agreement, DHSES and the State Comptroller. Payment for vouchers submitted by the Grantee shall only be rendered electronically, unless a paper check

is expressly authorized by the Director of DHSES, at the Director's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with the ordinary State procedures and practices. The Grantee 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](http://www.osc.state.ny.us/epay/index.htm), by email at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us), or by telephone at (518) 474-4032. Grantee acknowledges that it will not receive payment on any vouchers submitted under this Agreement if it does not comply with the State Comptroller's electronic payment procedures, except where the Director has expressly authorized payment by paper check as set forth above.

5. The Grantee shall meet all audit requirements of the federal government and State of New York.
6. Space rental provided by this Agreement must be supported by a written lease, maintained on file and made available by the Grantee upon request.
7. The Grantee's request for travel, meals or lodging reimbursement shall be in accordance with Appendix B, Budget, and, unless written authorization has been received from DHSES, shall not exceed rates authorized by the NYS Office Of State Comptroller (Audit and Control). Rates may be viewed online at: <http://www.osc.state.ny.us/agencies/travel/travel.htm>.
8. The Grantee's employment of a consultant must be supported by a written agreement executed by the Grantee and the consultant. A consultant is defined as an individual or organization hired by the Grantee for the stated purpose of accomplishing a specific task relative to the funded project. All consultant services must be obtained in a manner that provides for fair and open competition. The Grantee shall retain copies of all solicitations seeking a consultant, written agreements and documentation justifying the cost and selection of the consultant, and make them available to DHSES upon request. The Grantee further agrees that it shall assume sole and complete responsibility for fulfilling all the obligations set forth in the Agreement and the Grantee must guarantee the work of the consultant as if it were its own.
  - a) Unless a special condition applies to this Agreement, the rate for consultant services shall be reasonable and consistent with the amount paid for similar services in the marketplace. Time and effort reports are required for consultants.
  - b) Grantee must adhere to the following guidelines at a minimum when obtaining consultant services.
    - i. Consultant services that cost up to \$15,000 may be obtained by proving reasonableness of price. One method of proving reasonableness of price is to obtain three quotations from responsible vendors, on the vendor's letterhead. A description of the selection process must be maintained, as well as a record of the quotations.
    - ii. Consultant services that cost over \$15,000 up to \$50,000 may be obtained by advertising the opportunity in a reasonable manner and in an appropriate venue for a reasonable period of time. Reasonableness of price must be proven; obtaining three quotations as in (i.) above may be used. A record

must be maintained of the advertisement, the quotations, and the selection process.

- iii. Consultant services that cost over \$50,000 must use a formal competitive bidding process. Guidance may be obtained from DHSES. At a minimum, the competitive bidding process must incorporate the following: open, fair advertisement of the opportunity to provide services; equal provision of information to all interested parties; reasonable deadlines; establishment of the methodology of evaluating bids before the bids are opened; sealed bids opened at one time before a committee who will certify the process; and maintenance of a record of the competitive procurement process.
  - c) A Grantee that is a local government must contract for consultants in accordance with General Municipal Law Article 5-A and any other applicable regulations.
  - d) A Grantee who proposes to obtain consultant services from a particular vendor without competitive bidding must obtain the prior written approval of DHSES. The request for approval must be in writing and set forth, at a minimum, a detailed justification for selection and the basis upon which the price was determined to be reasonable. Further, such consultant services must be in accordance with the guidelines, bulletins and regulations of the NYS Office of the State Comptroller, State Procurement Council, and the U.S. Department of Homeland Security. A copy of DHSES' approval must also be submitted with the voucher for payment.
- 9. Equipment means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. A Grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above. A copy of the property record(s) or equipment inventory report(s) with relevant purchasing and supporting documentation must be made available to DHSES upon request. Property records or equipment inventory reports must be maintained, by award, that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property. The Grantee must document receipt of all applicable equipment purchased with grant funds. A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
- 10. Upon completion of all contractual requirements by the Grantee, DHSES will consider a request for continued use and possession of the equipment purchased with grant funds provided the equipment continues to be used in connection with a public security program. When disposing of equipment purchased with homeland security grant funding, a State agency must dispose of equipment in accordance with State Laws and procedures. All other Grantees shall dispose of equipment as follows:
  - a) Items of equipment with a current per unit market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.
  - b) Items of equipment with a current per unit fair market value of \$5,000 or more may

be retained or sold. If sold, the awarding agency shall have a right to an amount calculated by multiplying the proceeds from the sale by the awarding agency's share of the equipment. If retained, the current market value is to be used in the calculation. To remit payments, award recipients should contact DHSES at 1-866-837-9133 for guidance.

11. The Grantee further agrees that, when practicable, any equipment purchased with grant funding shall be prominently marked as follows:

“Purchased with funds provided by the U.S. Department of Homeland Security.”

12. Written justification and documentation for all procurements must be maintained on file, and made available to DHSES upon request. All procurements must be made in a fair and open manner and in accordance with the pre-determined methodology established for evaluating bids (e.g., lowest responsible bidder or best value).

a) Grantee must also make all procurements as noted below:

- i. If the Grantee is eligible to purchase an item or service from a government contract or is able to purchase such item or service elsewhere at a lower than or equal price, then such purchase may be made immediately.
- ii. A Grantee purchasing any single piece of equipment, single service or multiples of each that cost up to \$15,000 may do so by proving reasonableness of price. One method of proving reasonableness of price is to obtain three quotations from responsible vendors, on the vendor's letterhead. A description of the selection process must be maintained, as well as a record of the quotations.
- iii. Goods or services or multiples of each that have an aggregate cost between \$15,000 up to \$50,000 may be obtained by advertising the opportunity in a reasonable manner and in an appropriate venue for a reasonable period of time. Reasonableness of price must be proven; obtaining three quotations as in (ii) above may be used. A record must be maintained of the advertisement, the quotations, and the selection process.
- iv. A Grantee expending over \$50,000 must use a formal competitive bidding process. Guidance may be obtained from DHSES. At a minimum, the competitive bidding process must incorporate the following: open, fair advertisement of the opportunity to provide the goods or services; equal provision of the information to all interested parties; reasonable deadlines; establishment of the methodology for evaluating bids before the bids are opened; sealed bids opened at one time before a committee who will certify the process; and maintenance of a record of the competitive procurement process.
- v. A Grantee who proposes to purchase from a particular vendor without competitive bidding must obtain the prior written approval of DHSES. The request for approval must be in writing and set forth, at a minimum, a detailed justification for selection and the basis upon which the price was determined

to be reasonable. Further, such procurement must be in accordance with the guidelines, bulletins and regulations of the NYS Office of the State Comptroller, State Procurement Council, and the U.S. Department of Homeland Security. A copy of DHSES' approval must also be submitted with the voucher for payment.

- b) A Grantee that is a State entity must make all procurements in accordance with State Finance Law Article 11, and any other applicable regulations.
  - c) A Grantee that is a local government must make procurements in accordance with General Municipal Law Article 5-A, and any other applicable regulations.
13. The Grantee shall submit detailed itemization forms or a form deemed acceptable to DHSES for personal service, fringe benefit and non-personal service expenditures with any voucher and fiscal cost report requesting reimbursement. Grant-related expenditures shall be reported on Fiscal Cost Reports approved by DHSES. These reports must be prepared periodically and as defined in Appendix C of this Agreement. All reported expenditures must reconcile to the program accounting records and the approved budget. Prior period adjustments shall be reported in the same accounting period that the correction is made.
  14. The Grantee must submit program progress reports and final reports as specified in Appendix C.
  15. Where advance payments are approved by DHSES, the Grantee agrees to expend the advance payments in accordance with the purposes set forth in Appendix D and consistent with Appendix B. The advanced funds must be placed in an interest-bearing account and are subject to the rules outlined in 44 CFR Part 13, (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) and 2 CFR 215 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations), which require Grantees to promptly remit back to the federal government, through New York State Division of Homeland Security and Emergency Services, any interest earned on these advanced funds. The Grantee may keep interest earned up to \$100 per federal fiscal year if a local unit of government and \$250 per federal fiscal year if a not-for-profit for administrative expenses. This maximum limit is not per award; it is inclusive of all interest earned as the result of all federal grant program funds received per year. Interest must be reported on Fiscal Cost Reports and remitted to DHSES quarterly.

### C. ACCOUNTING FOR GRANT EXPENDITURES

- I. Grant funds may be expended only for purposes and activities set forth in this Agreement. Accordingly, the most important single requirement of accounting for this grant is the complete and accurate documentation of grant expenditures. If the Grantee receives funding from two or more sources, all necessary steps must be taken to ensure that grant-related transactions are not commingled. This includes, but is not limited to, the establishment of unique budget codes, a separate cost center, or a separate chart of accounts. Expenditures must be cross-referenced to supporting source documents (purchase orders, contracts, real estate leases, invoices, vouchers, timesheets, mileage logs, etc.).

2. Grantee agrees that it shall maintain adequate internal controls and adhere to Generally Accepted Accounting Principles for Government or Generally Accepted Accounting Principles for Not-for-Profit Organizations.
3. This Agreement may be subject to fiscal audits by DHSES, NYS Office of State Comptroller, pertinent federal agencies, and other designated entities to ascertain financial compliance with federal and/or State laws, regulations, and guidelines applicable to this Agreement. Such audits may include review of the Grantee's accounting, financial, and reporting practices to determine compliance with the Agreement and reporting requirements; maintenance of accurate and reliable original accounting records in accordance with governmental accounting standards as well as generally accepted accounting principles; and specific compliance with allowable cost and expenditure documentation standards prescribed by applicable federal, State, and DHSES guidelines.
4. None of the goals, objectives or tasks, as set forth in Appendix D, shall be sub-awarded to another organization without specific prior written approval by DHSES. Where the intention to make sub-awards is clearly indicated in the application, DHSES approval is deemed given, if these activities are funded as proposed.
5. If this Agreement makes provisions for the Grantee to sub-grant funds to other recipients, the Grantee agrees that all sub-grantees shall be held accountable by the Grantee for all terms and conditions set forth in this Agreement. The Grantee further agrees that it shall assume sole and complete responsibility for fulfilling all the obligations set forth in the Agreement and the Grantee must guarantee the work of any sub-grantee as if it were its own.
6. The Grantee agrees that all sub-grantee arrangements shall be formalized in writing between the parties involved. The writing must, at a minimum, include the following information:
  - Activities to be performed;
  - Time schedule;
  - Project policies;
  - Other policies and procedures to be followed;
  - Dollar limitation of the Agreement;
  - Appendix A, Appendix A-1, Appendix C, Certified Assurances for Federally Supported Projects, Certification Regarding Lobbying, Debarment and Suspension and any special conditions set forth in the Agreement;
  - Applicable federal and/or State cost principles to be used in determining allowable costs; and
  - Property Records or Equipment Inventory Reports.
7. The Grantee will not be reimbursed for sub-granted funds unless all expenditures by a sub-grantee are listed on detailed itemization forms or a form deemed acceptable to DHSES. Backup documentation for such expenditures must be made available to DHSES upon request. All expenditures must be programmatically consistent with the goals and objectives of this Agreement and with the Budget set forth in Appendix B.

#### **D. PROPERTY**

1. Any equipment, furniture or supplies or other property purchased pursuant to this Agreement is deemed to be the property of the State, except as may otherwise be governed by federal or

State laws, rules or regulations or stated in this Agreement.

2. Upon completion of all contractual requirements by the Grantee under this Agreement, DHSES shall accept a request for continued use and possession of the equipment purchased with grant funds providing the equipment continues to be used in accordance with the contracted activities and guidelines in this Agreement.
3. The Grantee must conduct a physical inventory of property records at least once every two years to verify the existence, current utilization and continued need for the property. In the event the property is no longer required by the Grantee, this fact should be reported to DHSES as soon as possible and appropriate guidelines followed, as specified in this Appendix.
4. If Grantee disposes of any equipment purchased under this Agreement during the active lifespan of said equipment, Grantee must reinvest any proceeds from the disposal into additional equipment items to continue Grantee's organization's activities subject to the guidelines of this Agreement. If the Grantee does not reinvest proceeds to continue activities subject to this Agreement, the percentage of the proceeds equal to the proportion of the original purchase price paid by funds for the Agreement must be repaid to the State of New York.

#### E. FEDERAL REQUIREMENTS

1. The Grantee must comply with the most recent version of the Administrative Requirements, Cost Principles, and Audit requirements.
2. A list of regulations commonly applicable to United States Department of Homeland Security (DHS) grants are listed below, including the guidance:
  - a) Administrative Requirements:
    1. 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
    2. 2 CFR Part 215, Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (OMB Circular A-110)
  - b) Cost Principles:
    1. 2 CFR Part 225, State and Local Governments (OMB Circular A-87)
    2. 2 CFR Part 220, Educational Institutions (OMB Circular A-21)
    3. 2 CFR Part 230, Non-Profit Organizations (OMB Circular A-122)
    4. Federal Acquisition Regulation Sub-part 31.2, Contracts with Commercial Organizations
  - c) Audit Requirements:
    1. OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations



3. The Grantee shall ensure it is aware of and complies with all applicable laws, regulations and program guidance. It is the responsibility of the Grantee to become familiar with and comply with all terms and conditions associated with acceptance of funds.
4. The Grantee must ensure full compliance with all cost documentation requirements, including specific personal service documentation, as applicable directly to the Grantee, sub-recipient or collaborative agency/organization. The Grantee must maintain specific documentation as support for project related personal service expenditures as this Agreement is supported by federal funds. Depending upon the nature or extent of personal service provided under this Agreement, the Grantee shall maintain semi-annual (or more frequent) personal service certifications and/or an after-the-fact personnel activity reporting system (or equivalent) which complies with all applicable laws, regulations and program guidance. Failure to do so may result in disallowance of costs.
5. In accordance with federal requirements, a Grantee that receives during its fiscal year \$500,000 or more of federal funds from all sources, including this Agreement, must agree to have an independent audit of such federal funds conducted in accordance with the federal Office of Management and Budget (OMB) Circular A-133. OMB Circular A-133 further requires that the final report for such audit be completed within nine months of the end of the Grantee's fiscal year.
6. The Grantee must provide one copy of such audit report to DHSES within nine months of the end of its fiscal year, or communicate in writing to DHSES that Grantee is exempt from such requirement.
7. Program income earned by the Grantee during the grant funding Period must be reported in writing to DHSES, in addition to any other statutory reporting requirements. Program income consists of income earned by the grant recipient that is directly generated by a supported activity or earned as a result of the grant program. Program income includes, but is not limited to, income from fees for services performed, the use of rental or real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights and interest on loans made with federal award funds. For example, if the purpose of a grant is to conduct conferences, any training fees that are generated would be considered program income. Interest earned on grant funds is not considered program income unless specified in Appendix D. The Grantee agrees to report the receipt and expenditures of grant program income to DHSES. Program income (not to include interest earned), generated by the use of these grant funds will be used to enhance the grant project.
8. Any creative or literary work developed or commissioned by the Grantee with grant support provided by DHSES shall become the property of DHSES, entitling DHSES to assert a copyright therein, unless the parties have expressly agreed otherwise in a written instrument signed by them.
  - a) If DHSES shares its right to copyright such work with the Grantee, DHSES reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use: (a) the copyright in any work developed under a grant, sub-grant, or contract under a grant or sub-grant; and (b) any rights of copyright to which a Grantee, sub-grantee, or a contractor purchases

ownership with grant support.

- b) If the grant support provided by DHSES is federally-sponsored, the federal awarding agency also reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use: (a) the copyright in any work developed under a grant, sub-grant or contract under a grant or sub-grant; and (b) any rights of copyright to which a Grantee, sub-grantee, or a contractor purchases ownership with such grant support.
- c) The Grantee shall submit one copy of all reports and publications resulting from this Agreement to DHSES. Any document generated pursuant to this grant must contain the following language:

“This project was supported by a grant administered by the New York State Division of Homeland Security and Emergency Services and the U.S. Department of Homeland Security. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the New York State Division of Homeland Security and Emergency Services or the U.S. Department of Homeland Security.”

#### F. SAFEGUARDS FOR SERVICES AND CONFIDENTIALITY

1. Services performed pursuant to this Agreement must be secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.
2. Funds provided pursuant to this Agreement shall not be used for any partisan political activity, or for activities that may influence legislation or the election or defeat of any candidate for public office.
3. Information relating to individuals who may receive services pursuant to this Agreement shall be maintained and used only for the purposes intended under the Agreement and in conformity with applicable provisions of federal and State laws and regulations, or as specified in this Agreement.

#### G. AMENDMENT, SUSPENSION, TERMINATION OF AGREEMENT

1. The Grantee agrees that if the project is not operational within 60 days of the execution date of the Agreement, it will report by letter to DHSES the steps taken to initiate the project, the reasons for delay, and the expected starting date. If the project is not operational within 90 days of the execution date of the Agreement, the Grantee will submit a second statement to DHSES explaining the delay. DHSES may either cancel the project and redistribute the funds or extend the implementation date of the project beyond the 90-day period when warranted by extenuating circumstances.
2. DHSES will be allowed to extend, increase, amend, decrease or terminate this Agreement, upon appropriate approval of the NYS Offices of Attorney General and/or State Comptroller, as follows:

- a) Upon approval by the NYS Office of State Comptroller, the term of this Agreement may be extended in conjunction with the extension of the federal grant award from which this Agreement is funded, not to exceed a term of five years from the initial start date.
  - b) Upon approval by the NYS Office of State Comptroller, the amount of this Agreement may be increased provided the funds are used in accordance with the guidelines associated with this Agreement grant application kit, as outlined in Appendix D, and the scope of work has not substantially changed.
  - c) This Agreement may be terminated at any time upon mutual written consent of DHSES and the Grantee.
  - d) DHSES may decrease the level of funding or terminate the Agreement immediately, upon written notice of termination to the Grantee, if the Grantee fails to comply with the terms and conditions of this Agreement and/or with any laws, rules, regulations, policies or procedures affecting this Agreement.
  - e) This Agreement may be terminated for convenience upon thirty (30) days' notice to the Grantee.
3. DHSES reserves the right to suspend program funds if the Grantee is found to be in noncompliance with the provisions of this Agreement or other grant agreements between the Grantee and DHSES or, if the Grantee or principals of the Grantee are under investigation by a New York State or local law enforcement agency for noncompliance with State or federal laws or regulatory provisions or, if in DHSES' judgment, the services provided by the Grantee under the Agreement are unsatisfactory or untimely.
- i. DHSES shall provide the Grantee with written notice of noncompliance.
  - ii. Upon the Grantee's failure to correct or comply with the written notice by DHSES, DHSES reserves the right to terminate this Agreement, recoup funds and recover any assets purchased with the proceeds of this Agreement.
  - iii. DHSES reserves the right to use approved grant related expenditures to offset disallowed expenditures from any grant funded through its offices upon appropriate notification to the Grantee, or upon reasonable assurance that the Grantee is not in compliance with these terms.
4. All notices permitted or required hereunder shall be in writing and shall be transmitted either:
- (a) via certified or registered United States mail, return receipt requested;
  - (b) by facsimile transmission;
  - (c) by personal delivery;
  - (d) by expedited delivery service; or
  - (e) by e-mail.
5. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

6. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.
7. Upon receipt of the notice of termination, the Grantee agrees to cancel, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agrees to not incur any new obligations after receipt of the notice without prior written approval by DHSES.
8. DHSES shall be responsible for payment on claims pursuant to costs incurred pursuant to terms of the AGREEMENT. In no event shall DHSES be liable for expenses and obligations arising from the program(s) in this Agreement after the termination date.

#### **H. AVAILABILITY OF FUNDS**

1. If for any reason the State of New York or the federal government terminates its appropriation through DHSES or fails to pay the full amount of the allocation for the operation of this program, this Agreement may be terminated or reduced at the discretion of DHSES, provided that no such reduction or termination shall apply to allowable costs already incurred by the Grantee where funds are available to DHSES for payment of such costs. Upon termination or reduction of this Agreement, all remaining funds paid to the Grantee that are not subject to allowable costs already incurred by the Grantee shall be returned to DHSES. In any event, no liability shall be incurred by DHSES or by the State of New York beyond monies available for the purposes of this Agreement. The Grantee acknowledges that any funds due to DHSES because of disallowed expenditures after audit shall be its responsibility.
2. Unless otherwise specified, in accordance with the State Finance Law, the availability of federal and State funds budgeted as local assistance shall cease on September 15<sup>th</sup> of the year following the fiscal year in which the funds were appropriated, unless such funds are re-appropriated in the State Budget by the New York State Legislature. When local assistance funds are not re-appropriated, vouchers must be received by DHSES by August 1st of the year following the fiscal year in which the funds were appropriated to ensure reimbursement.

#### **I. RETENTION OF RECORDS**

1. Original records must be retained for six years following the submission of the final claim against this Agreement or the end of the Agreement Period, if later. In cases where litigation, a claim, or an audit is ongoing, the records must be retained until formal completion of the action and resolution of issues or the end of the six year Period, whichever is later. In the event of an audit, the project manager or a designated responsible party must be prepared to produce source documents that substantiate claimed expenditures. DHSES requires that all documentation materials be organized, readily accessible, and cross-referenced to the Fiscal Cost Reports previously submitted. If fiscal records, such as purchase orders, vouchers, payroll registers, payroll tax records, property records or equipment inventory records, etc., are to be kept in a fiscal office which is separate and apart from the program office, the

project manager must have access to these original records. Such fiscal records must readily identify the associated project.

**J. INDEMNIFICATION**

1. The Grantee shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the Grantee or its sub-grantees pursuant to this Agreement. The Grantee shall indemnify and hold harmless the State of New York and its officers and employees from claims, suits, actions, damages and costs of every nature arising out of the provision of services pursuant to this Agreement.
2. The Grantee 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.

<b>Appendix B - Project Budget</b>		
<b>Contract Period: 8/1/2009 - 7/31/2012</b>		
<u>DESCRIPTION</u>	<u>GRANT AMOUNT</u>	<u>MATCH AMOUNT</u>
<b>NYS Division of Criminal Justice Services</b>		
<b>Consultant Services</b>		
Consultant to upgrade electronic fingerprint submission processes	25,000.00	0.00
Intelligence analyst consultant	125,000.00	0.00
Consultant to install license plate reader equipment	100,000.00	0.00
	<b>250,000.00</b>	<b>0.00</b>
<b>Equipment</b>		
Data hub servers, operating software, and installation	155,000.00	0.00
Livescan and cardscan hardware, software, server, software license, and installation costs	327,000.00	0.00
Federated search server and software	130,000.00	0.00
License plate readers and software upgrade (DHS EHP review required unless mobile or portable)	930,000.00	0.00
Video teleconferencing equipment	18,000.00	0.00
License plate reader data servers and software for the New York State Intelligence Center	125,000.00	0.00
	<b>1,685,000.00</b>	<b>0.00</b>
<b>Travel and Subsistence</b>		
Travel for planning	15,000.00	0.00
	<b>15,000.00</b>	<b>0.00</b>
Grant Total:	<b>1,950,000.00</b>	<b>0.00</b>

**APPENDIX C**  
**PAYMENT AND REPORTING SCHEDULE**

**For All Grantees:**

1. The Grantee agrees that this is a reimbursement-based contract; an advance may be provided as specified in Appendix D. All requests for reimbursement must reflect actual costs that have been disbursed by the Grantee. Items or services not received are not eligible for reimbursement.

Reimbursement requests need to include the following documents:

- Signed Voucher and Fiscal Cost Report
  - Detailed Itemization Forms or other forms deemed acceptable by DHSES of any budgeted category for which reimbursement is requested
  - Written documentation of all required DHSES approvals, as appropriate
2. Grantee shall provide complete and accurate vouchers to the Agency in order to receive payment. Vouchers submitted to DHSES must contain all information and supporting documentation required by the Agreement, DHSES and the State Comptroller. Payment for vouchers submitted by the Grantee shall only be rendered electronically, unless a paper check is expressly authorized by the Director of DHSES, at the Director's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with the ordinary State procedures and practices. The Grantee 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](http://www.osc.state.ny.us/epay/index.htm), by email at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us), or by telephone at (518) 474-4032. Grantee acknowledges that it will not receive payment on any vouchers submitted under this Agreement if it does not comply with the State Comptroller's electronic payment procedures, except where the Director has expressly authorized payment by paper check as set forth above.
  3. Grantees must submit all required fiscal reports, supporting documentation and program progress reports. Failure to meet these requirements will result in the rejection of associated vouchers. Final vouchers, reimbursement requests and reports must be submitted within 30 days of the end of the grant contract period. Failure to voucher within this period may result in the loss of grant funds. The Grantee must also refund all unexpended advances **and** any interest earned on the advanced funds. Property Records or Equipment Inventory Reports as defined in Appendix A-1, Paragraph 12, must be available at the conclusion of the grant contract period and submitted to DHSES upon request.
  4. If at the end of this contract there remain any monies (advanced or interest earned on the advanced funds) associated with this contract in the possession of the Grantee, the Grantee shall submit a check or money order for that amount payable to the order of the **New York State Division of Homeland Security and Emergency Services**. Remit the check along with the final fiscal cost report within 30 days of termination of this grant contract to:

NYS Division of Homeland Security and Emergency Services  
Federal Fiscal Unit  
State Campus - Building 7A  
1220 Washington Avenue  
Albany, NY 12242

5. Vouchers shall be submitted in a format acceptable to DHSES and the Office of the State Comptroller. Vouchers submitted for payment shall be deemed to be a certification that the payments requested are for project expenditures made in accordance with the items as contained in the Project Budget (Appendix B) and during the contract period. Such voucher shall also be deemed to certify that: a) the payments requested do not duplicate reimbursement from other sources of funding; and b) the funds provided herein do not replace funds that, in the absence of this grant, would have been made available by the Grantee for this program.
6. Fiscal cost reports must be submitted showing grant expenditures. They must also show the amount of interest earned to date on any advanced funds.

All submitted vouchers will reflect the Grantee's actual expenditures and will be accompanied by supporting detailed itemization forms or a form deemed acceptable to DHSES for personal service, fringe benefit and non-personal service expenditures or other documentation as required, and by a fiscal cost report for the reporting period. In the event that any expenditure for which the Grantee has been reimbursed by grant funds is subsequently disallowed, DHSES, in its sole discretion, may reduce the voucher payment by the amount disallowed. If necessary, the Grantee may be required to submit a final budget reallocation.

DHSES reserves the right not to release subsequent grant awards pending Grantee compliance with this Agreement.

7. For purposes of prompt payment provisions, the Designated Payment Office for the processing of all vouchers is the Contract Unit of DHSES. Payment of grant vouchers shall be made in accordance with the provisions of Article XI-A of the State Finance Law. Payment shall be preceded by an inspection period of 15 business days which shall be excluded from calculations of the payment due date for purposes of determining eligibility for interest payments. The Grantee must notify the Federal Fiscal Unit in writing of a change of address in order to benefit from the prompt payment provision of the State Finance Law. When progress reports are overdue, vouchers will not be eligible for prompt payment.
8. Timely and properly completed New York State vouchers, with supporting documentation when required, shall be submitted to:



NYS Division of Homeland Security and Emergency Services  
 Attention: Contracts Unit  
 State Office Building Campus - Bldg. 7A  
 1220 Washington Avenue, Suite 610  
 Albany, NY 12242

9. The Grantee will submit program progress reports and one final report to DHSES on a prescribed form provided by DHSES as well as any additional information or amended data as required.

Progress reports will be due within 30 days of the last day of each calendar quarter or on an alternate schedule as prescribed in Appendix D. Progress reports will be due within 30 days of the last day of the calendar quarter from the start date of the program and the final report will be due upon completion of the project or termination of this Agreement. Calendar quarters, for the purposes of making program progress reports, shall be as follows:

<b>Calendar Quarter</b>	<b>Report Due</b>
January 1 - March 31	April 30
April 1 - June 30	July 30
July 1 - September 30	October 30
October 1 - December 31	January 30

The final report, or where applicable interim progress reports, will summarize the project's achievements as well as describe activities for that quarter.

## Appendix D - Program Workplan and Special Conditions

### I. ALL GRANT FUNDS:

#### A. Permissible Use of Funding

1. Homeland Security Grant Program (HSGP) funds must be used in accordance with the guidelines set forth in the FY 2009 HSGP application kit, which can be located at <http://www.fema.gov/government/grant/hsgp/index09.shtml>.
2. All planning, training and Chemical, Biological, Radiological and Nuclear Explosives (CBRNE) exercises and/or equipment purchased with FY 2009 HSGP funds must support the prevention, response and/or recovery goals set forth in New York State's Homeland Security Strategy represented by the list of priorities included in the grant applications and approved investment justifications. New York State's Homeland Security Strategy can be located on DHSES' website at <http://www.security.state.ny.us/publications/index.html>.
3. Designated Urban Areas under the Urban Areas Security Initiative (UASI) must have a charter document on file with the Federal Emergency Management Agency (FEMA) prior to drawing down FY 2009 UASI funding. The charter must address critical issues such as membership, governance structure, voting rights, grant management and administration responsibilities, and funding allocation methodologies.

#### B. Record Requirements

1. Grantees shall keep an agenda and meeting minutes on file for all meetings conducted regarding HSGP funded activities.
2. Any documents produced as a result of these meetings such as plans, schedules, or procedures, will also be kept on file and be made available to the NYS Division of Homeland Security and Emergency Services (DHSES), upon request.

#### C. Equipment Purchases

1. Equipment purchased with grant funds must fall within the allowable equipment categories for the FY 2009 HSGP as listed on the web-based Authorized Equipment List (AEL) on the Responder Knowledge Base (RKB) (<https://www.rkb.us>).
2. Grantees are responsible to request a determination of eligibility from the U.S. Department of Homeland Security (DHS), through the NYS Division of Homeland Security and Emergency Services (DHSES), for any item in question. Unless otherwise stated in the program guidance, equipment must meet all mandatory regulatory and/or DHS-adopted standards to be eligible for purchase using FY 2009 HSGP funds.
3. The New York State Communication Interoperability Plan (SCIP), as well as DHS Grant Guidance for grant funding, requires that all interoperable communications equipment must be on the Authorized Equipment List (AEL) and that the use of APCO P-25 compliant equipment is a recommended technology to achieve emergency interoperable communications.

#### D. Training & Exercise Related Activities

1. Any non-DHS approved training courses to be supported by this award must be submitted to DHS, through DHSES for certification.
2. All exercises conducted must be managed and executed in accordance with the Homeland Security Exercise and Evaluation Program (HSEEP). An After-Action Report/Improvement Plan (AAR/IP) must be prepared and submitted to DHSES following every exercise, regardless of type or scope. AAR/IPs must conform to the HSEEP format and must be submitted within 60 days of completion of the exercise.
3. Grantees are required to be NIMS compliant. DHSES requires that Grantees contact their county point of contact to determine how the particular county requires reporting. Grantees are expected to complete the web based NIMSCAST report or provide the county with a completed paper copy of the NIMSCAST report.

#### E. Law Enforcement Requirements

1. Grantees that are law enforcement agencies agree that such funding shall be utilized for prevention, preparedness, and response initiatives consistent with the New York State Homeland Security Strategy, and with Counter Terrorism Zone (CTZ) efforts at the State and local level. This will ensure that fiscal resources are used for seamless and effective counter terrorism planning, training, information sharing, investigation, equipment acquisition, and response functions.

#### Appendix D - Program Workplan and Special Conditions

2. Particular attention must be paid to equipment and technology acquisitions, and, where similar technology already exists in the State's law enforcement communities, Grantees will ensure that interoperability between and among existing law enforcement systems, and the New York State Intelligence Center (NYSIC), is accomplished.
3. Grantees further agree to consult with the NYSIC to ensure agency participation and inclusion in New York State's Field Intelligence Officer (FIO) Program.

#### F. EHP Requirements

1. Grantees shall comply with all applicable federal, State, and local environmental and historic preservation (EHP) requirements and shall provide any information requested by FEMA to ensure compliance with applicable laws including: National Environmental Policy Act, National Historic Preservation Act, Endangered Species Act, and Executive Orders on Floodplains (11988), Wetlands (11990) and Environmental Justice (12898).
2. Failure of Grantees to meet federal, State, and local EHP requirements and obtain applicable permits may jeopardize federal funding. Grantees shall not undertake any project having the potential to impact EHP resources without the prior approval of FEMA, including but not limited to communications towers, physical security enhancements, new construction, and modifications to buildings that are 50 years old or greater. Grantees must comply with all conditions placed on the project as the result of the EHP review.
3. Any change to the approved project scope of work will require re-evaluation for compliance with these EHP requirements.
4. If ground disturbing activities occur during project implementation, Grantees must ensure monitoring of ground disturbance and if any potential archeological resources are discovered, such Grantee will immediately cease construction in that area and notify FEMA and the appropriate State Historic Preservation Office.

#### G. Equipment Maintenance Requirements

1. Grantees must track grant funds used for maintenance contracts, warranties, repair or replacement costs and upgrades, and report such expenditures in fiscal and program reports.

#### II. ADDITIONAL REQUIREMENTS FOR TARGETED GRANT PROGRAMS:

##### A. Explosive Detection Canine Team Grant Program

1. Grantees are required to follow New York State Division of Criminal Justice Services (DCJS) or New York State Police (NYSP) guidelines for maintenance training in order to meet the annual recertification requirements for canines purchased with these grant funds.
2. This requirement includes attending training in which a DCJS certified canine explosives trainer is present and completes the proper documentation of such training for recertification, or attending NYSP regional explosives detection canine training as per their protocol.
3. Grantees must make these records available to DHSES, upon request, for review to ensure compliance with these conditions.

##### B. Companion Animal Shelter Equipment (CASE) Grant

1. CASE Grantees are required to submit their animal response plan to DHSES prior to Contract end date.
2. Equipment selected for purchase as part of the CASE Grant Program must be from the approved equipment list for Emergency Animal Sheltering Caches and submitted to DHSES for approval prior to purchase.

##### C. Operation SPIDER/RED Cell Team Exercises

1. To satisfy the programmatic reporting requirements for Operation SPIDER/Red Team Exercises, recipient is required to submit only one program progress report per Operation/Red Team Exercise to DHSES. This report is due 30 days after the last day of each Operation/Exercise. After Action Reports (AARs) must be submitted to DHSES for each Red Team Exercise within 30 days of the last day of each Red Team Exercise.

##### D. Bomb Squad Initiative

1. For the performance period of this grant, all bomb squads awarded grant funds by DHSES must establish, maintain and, when requested by DHSES, demonstrate the capability to wirelessly transmit radiological spectra data files from the field in real-time. These files must be transmitted to designated "reach-back" and scientific support elements in the Domestic Nuclear Detection Office (DNDO's) "Securing the Cities" Initiative or New York Statewide Radiological Detection and Interdiction Program. As necessary, funds from this award can be utilized to establish and/or maintain this capability as budgeted in approved Appendix B Project Budget.