

**DOCUMENT CONVERSION AND DATA CAPTURE AGREEMENT
BETWEEN
WORKERS' COMPENSATION BOARD
AND
NEW YORK STATE INDUSTRIES FOR THE DISABLED, INC.**

C140344

This Document Conversion and Data Capture Agreement ("Agreement") is entered into by and between the Workers' Compensation Board ("the Board"), an agency of the State of New York, 328 State Street, Schenectady, New York 12305, and New York State Industries for the Disabled, Inc. ("Contractor"), a New York corporation, 11 Columbia Circle Drive, Albany, New York 12203.

Recitals

Whereas, the Board desires to award this Agreement pursuant to the New York State Preferred Source Program, Article XI, Section 162 of the New York State Finance Law.

Whereas, the Commissioner of Education has appointed Contractor, a 501(c)(3) not-for-profit corporation, to facilitate orders on behalf of Preferred Source agencies serving significantly disabled persons.

Whereas, the Board created a Business Requirements Document (BRD) and accepted a revised BRD describing its need for document conversion and data capture.

Whereas, through Contractor's Corporate Partnering Program, Contractor and Xerox State & Local Solutions, Inc. ("Xerox") submitted a proposal and a revised proposal for document conversion and data capture services ("Contractor's proposal") to the Board.

Whereas, the Board approves of Contractor's selection of and commitment to Xerox to exclusively perform the entirety of the corporate partnering services with NYSID member agency NYSARC, Inc. Broome-Tioga Inc. d/b/a/ Achieve ("Achieve") under this Agreement so long as Achieve and Xerox remain members in good standing, and awards this Agreement to Contractor.

Now, therefore, the parties herby agree as follows:

1. DOCUMENT PREPARATION & ORDER OF PRECEDENCE

The complete Agreement governing the rights and responsibilities of the parties hereto shall be deemed inclusive of the following items:

- That portion of the Agreement preceding the signatures of the parties in execution (the "Contract"); and
- The appendices attached to the Contract: Appendix A, Standard Clauses for All New York State Contracts; Appendix B, Business Requirements Document ("BRD"); Appendix C, Contractor's Proposal; and Appendix D, Confidentiality Agreement and Certificate of Nondisclosure; Appendix E, Affirmation pursuant to State Finance Law, Non-Responsibility Determinations, Certification of Compliance, Certificate of Liability, Workers' Compensation, Disability Benefit Insurance, Non-Collusive Bidding Certification, Omnibus Procurement Act of 1992.

In the event of any inconsistency in or conflict among the document elements of the Agreement identified herein, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the following order:

- First, Appendix A, Standard Clauses for All New York State Contracts and Appendix E attached to the Contract;
- Second, the Contract, ;
- Third, the BRD; and,
- Fourth, Contractor's proposal.
- Fifth, The Non-Disclosure Agreement between the Board and the Contractor

These documents constitute the entire Agreement between the parties thereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained therein shall be binding or valid and these contracts shall not be changed, modified or altered in any manner except by an instrument in writing executed by authorized representatives of both parties hereto.

2. AGREEMENT APPROVAL

The parties agree that the Agreement, as described in Section 1, fairly delineates the work to be performed under the Agreement and the terms of compensation. The State Finance Law of the State of New York, Section 112, requires that any contract made by a State department that exceeds fifty thousand dollars in amount, must be first approved by the Comptroller of the State

of New York, before becoming effective. The parties recognize that the Agreement is wholly executory and not binding until and unless approved by:

- Office of General Services,
- The Office of the Attorney General, and
- The Office of the State Comptroller.

3. TERM

The period covered by the Agreement will commence on the date of approval by the Office of the State Comptroller, followed by an Operations Readiness and System Development period as more fully described on page 36 of the Contractor's Revised Proposal dated July 24, 2013, and shall continue for a period of five (5) years from the Project Implementation as defined in the BRD

4. BASIS OF PAYMENT

The sole compensation for the Contractor under this Agreement will be the payment based on pricing indicated in the Contractor's Revised Proposal dated July 24, 2013.

Notwithstanding, Contractor's pricing assumes aggregate image volume (paper, electronic, etc.) of one-hundred million (100,000,000) over the first thirty-six (36) months following Project Implementation. Aggregate image volume will be calculated at the end of month thirty-six (36) following Project Implementation.

- (a) If during the first three years following Project Implementation the Board's aggregate image volume is one-hundred-ten percent (110%) or more of the volumes stated in Contractor's proposal, then Contractor will provide the Board with an additional five percent (5%) per image price discount in years four and five (incremental to the discount already proposed for those two years). No discount in per image pricing will be made to historical work performed during months one through thirty-six (1-36).
- (b) If during the first three years following Project Implementation the Board's aggregate image volume falls below ninety percent (90%) of the volumes stated in Contractor's proposal, then Contractor will maintain year one through three (1-3) per image pricing for years four and five. This pricing will replace the discounted per-image price quoted in Contractor's proposal.
- (c) If during the first three years following Project Implementation the Board's aggregate image volume is between ninety percent (90%) and one-hundred-ten (110%) percent of the volumes stated in Contractor's proposal, then Contractor will maintain the discounted per image pricing in years four and five as originally quoted in Contractor's proposal.

Contractor shall be the exclusive provider of document conversion and data capture services to the Board for the term of this Agreement.

Fees paid, for which it is subsequently determined that Contractor was not entitled, must be reimbursed to the Board. The Board may do so by subtracting such fees from any payments that later become due to the Contractor under this Agreement.

5. PAYMENT PROCEDURE

The contractor shall bill the Board by submitting invoices to:

Mary Grace Petralito
Supervisor of Contract Administration
New York State Workers' Compensation Board
328 State Street
Schenectady, NY 12305

6. TAXES

The Board represents and warrants that purchases on behalf of the State of New York are not subject to any state or local sales or use taxes, or to federal excise taxes. The Contract signed by New York State representatives is sufficient evidence to qualify the transaction as exempt from tax under Section 116 (a) (1), Tax Law. For tax-free transactions under the Internal Revenue Code, the New York State Registration Number is: 14740026K. Contractor and Xerox remain liable and solely responsible without exemption for their respective social security, unemployment insurance, and other like taxes.

7. TERMINATION

7.1 The Agreement may be terminated:

- (a) by mutual written agreement of the parties;
- (b) by the Board, whenever the Contractor shall materially default in performance of the Agreement in accordance with its terms and shall fail to cure such default within a period of thirty (30) days after receipt from the Board of a written notice specifying the default. If it is subsequently determined for any reason that the Contractor was not in default or that the Contractor's failure to perform or make progress in performances was due to causes beyond the control and without the fault or negligence of the Contractor, either in part or in full, the Board shall have the option to either 1) deem the Notice of Termination to have been issued under Section 7.2 herein as a termination for convenience and the rights and obligations of the parties shall be governed accordingly, or 2) allow the Contractor to resume performance under this Agreement. In the event of a termination for default, the Contractor shall be paid the following:
 - (a) operating costs, wind down expenses (such as severance costs) and charges for services performed (minus any actual cost to the Board assessed for failure to comply within the Cure Time);

- (b) costs allowable in the reasonable judgment of the Board incurred in providing continuity of services; and
- (c) costs allowable in the discretion of the Board, which will not be unreasonably withheld, of settling and paying subcontractor and supplier claims arising out of the termination of work when costs were incurred prior to termination and such claims are properly chargeable to the terminated portion of the Agreement.

7.2 The Agreement may be terminated by the Board for any reason. Such termination shall be referred to herein as "termination for convenience." Upon receipt of sixty (60) days notice of termination for convenience, the Contractor shall be paid for the following:

- (a) operating costs, wind down expenses (such as severance costs), charges for services performed, and reasonable and appropriate expenses incurred in good faith and approved by the Board, which approval shall not be unreasonably withheld;
- (b) reasonable costs arising from the settlement process, including accounting, legal, clerical, and other justifiable expenses, necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of this Agreement, and for the termination and settlement of subcontracts thereunder;
- (c) costs allowable in the discretion of the Board, which will not be unreasonably withheld, of settling and paying subcontractor and supplier claims arising out of the termination of work when costs were incurred prior to termination and such claims are properly chargeable to the terminated portion of the Agreement; and
- (d) personnel cost not to exceed 60 days of payroll.

7.3 Pursuant to State Finance Law §139-k (5), the Board reserves the right to terminate this Agreement if it is found that the certification filed by the Contractor in accordance with State Finance Law §139-k was intentionally false or incomplete. Upon making such a finding, the Board may exercise its right to terminate the Agreement by providing written notification of termination to the Contractor in accordance with Section 7.7 of this Contract.

7.4 Upon filing of a petition in bankruptcy or insolvency by or against the Contractor or subcontractor, if such petition is not vacated within thirty (30) days of its filing, the Board shall have the option to deem the Agreement terminated without termination services or costs; but payments for services rendered, subject to the status of the Board as a creditor in possession, shall be made as provided in Section 7.1 herein. The Board shall not be precluded during the thirty-day vacatur period from terminating the Agreement under other bases provided for in Section 7 herein.

7.5 Should State funds for this contract become unavailable, the Board may deem this Agreement or any part thereof terminated. If the State provides notice to Contractor that funding for this Agreement is no longer available or temporarily suspended, Contractor shall have no obligation to perform services until such time as funding

becomes available. If funding becomes available, Contractor agrees that it will resume services under the Agreement as if no lack of funding occurred. In the absence of funding, Contractor would have no contractual basis for performing the work. For the avoidance of doubt, Contractor will have no obligation to perform services beyond any funding cap specified in the agreement.

- 7.6 The Board reserves the right to terminate this Agreement if it is found that the Contractor failed to file an annual report as required pursuant to Chapter 10 of the Laws of 2006, effective June 19, 2006. Upon making such a finding, the Board may exercise its right to terminate the Agreement by providing written notification of termination to the Contractor in accordance with Section 7.7 of this Contract.

7.7 Procedures for Termination

- (a) Any Notice of Termination issued by the Board shall be in writing and shall specify the termination date. The Notice of Termination shall be addressed to the Contractor, at the address listed above and shall be served upon the Contractor by Certified Mail, Return Receipt Requested. Upon receipt of a written Notice of Termination (or should termination occur due to mutual agreement of the parties as provided in Section 7.1), the Contractor shall:
 - (i) Immediately make provisions for turning over to the Board any remaining records that are held after the completion of the final accounting as provided in this Section. Additionally, the Contractor shall, subject to the compensation provided in the Contract (which will be based on the time and materials labor rates provided in the Contractor's proposal, or, if other categories of labor are needed, to be determined at the time of transition), assist the Board or a successor Contractor in completing any activities undertaken before the termination of the Agreement.
 - (ii) Stop work under this Agreement on the date and to the extent specified in the Notice of Termination or as agreed to by the parties.
 - (iii) Take such action as may be necessary, or as the Board may direct, to protect and preserve the property related to the Agreement that is in the possession or control of the Contractor and in which the Board has or may acquire an interest.
- (b) After receipt of a Notice of Termination, the Contractor shall submit to the Board its termination claim in the form and with the certification prescribed by the Board. Such claim shall be submitted promptly, but in no event later than two months from the effective date of termination. Should the Contractor fail to submit its termination claims within the time allowed, the Board may, subject to any review required by the State's procedures in effect as of the date of execution of the Agreement, determine, on the basis of information available to it, the amount, if any, due to the Contractor by reason of the

termination and shall thereupon cause to be paid to the Contractor the amount so determined.

In arriving at the amount due the Contractor under Sections 7.1, 7.2 and 7.4 herein, there shall be deducted:

- (i) All costs to the Board assessed against the Contractor that apply to the terminated portion of this Agreement; and
- (ii) Any claim that the Board may have against the Contractor in connection with this Agreement.

8. WAIVER OF BREACH

No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by a party to, or waiver of, a breach under this Agreement shall not constitute consent to, a waiver of, or excuse for any other, different or subsequent breach.

9. CONTRACTOR'S REPRESENTATIONS & WARRANTIES

The Contractor warrants and represents the following:

- (a) Contractor assumes responsibility for the cost and timely accomplishment of all obligations and duties required by the Agreement whether or not the Contractor, or subcontractors, performs such obligations or duties. Contractor shall ensure that all obligations and duties are carried out in a competent and timely manner;
- (b) Contractor represents that the services provided under this Agreement will conform to the requirements and specifications contained in the BRD;
- (c) Contractor knows of no legal, business, or financial impediment at the time of execution, to the successful completion of its obligations pursuant to this Agreement. If Contractor learns of any impediment (including bankruptcy, receivership, etc.), Contractor must notify the Board at that time. Failure to do so during the course of the Agreement will be considered a material breach;
- (d) Contractor agrees to perform its obligations in accordance with all of the conditions, covenants, statements, and representations contained herein, during the Agreement term;
- (e) During the term of this Agreement, Contractor will maintain and make available the necessary levels of qualified personnel to ensure proper performance by Contractor of its obligations and responsibilities under this Agreement; and all work will be performed in a professional, expeditious manner; and
- (f) A breach of any provision of this section shall be deemed a "material breach" for purposes of default under this Agreement.
- (g) To the extent permitted by law, Contractor makes no other warranties whatsoever, express or implied, with regard to the services hereunder, in whole or in part. Contractor explicitly disclaims all warranties of merchantability and fitness for a particular purpose.

10. INDEMNIFICATION

Contractor shall be fully liable for the actions of its agents, employees, partners, and subcontractors and shall fully indemnify and save harmless the State of New York (hereinafter "State"), the Board, and their officers, agents or employees from and against any and all damages and expenses (including attorney's fees) from suits, actions, and claims of every name and description arising out of Contractor's negligent performance of this Agreement. However, Contractor shall not indemnify the State or the Board for that portion of any claim, loss, or damage arising hereunder which is caused by the negligent act or failure to act of the State or the Board. The State and the Board may retain such moneys from any amount due Contractor as may be necessary to satisfy any claim for damages, costs, and the like asserted against the State or the Board unless Contractor at the time of the presentation of the claim shall demonstrate to the Board's satisfaction that sufficient moneys are set aside by Contractor in the form of a bond or through insurance coverage to cover any associated damages and other costs that may be claimed.

11. LIMITATION OF LIABILITY

Except as otherwise set forth in the Indemnification Paragraphs above, the limit of liability shall be as follows:

- (a) For all claims against Contractor where liability is not otherwise set forth in the Contract as being "without limitation", and regardless of the basis on which the claim is made, Contractor's aggregate liability shall in no case exceed liability for direct damages limited to the greater of (i) the dollar amount for the first twelve months of this Agreement, or (ii) two (2) times the fees paid under this Agreement, in either case, excluding Agreement Amendments.
- (b) The Board may retain such monies from any amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted against the Board unless Contractor at the time of the presentation of claim shall demonstrate to the Board's satisfaction that sufficient monies are set aside by Contractor in the form of a bond or through insurance coverage to cover associated damages and other costs.
- (c) Notwithstanding the foregoing, contractor remains liable, without monetary limitation, for direct damages for personal injury, death or damage to real property or intellectual property attributable to the negligence or other tort of contractor, its officers, employees or agents.
- (d) Notwithstanding the above, neither Contractor nor the Board shall be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from this Agreement or performance under this Agreement, including, without limitation, damages resulting from loss of use or loss of profit by the Board, Contractor, or by others.

12. INDEMNIFICATION RELATING TO THIRD PARTY RIGHTS

Contractor will indemnify, without limitation, and hold the State of New York harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs that may be finally assessed against the State in any action for infringement of a United States Letter Patent, or of any copyright, trademark, trade secret, or other third-party proprietary right, provided that the State shall give Contractor:

- (a) prompt written notice of any action, claim or threat of infringement suit, or other suit;
- (b) the opportunity to take over, settle or defend such action, claim, or suit at contractor's sole expense; and
- (c) all reasonable assistance in the defense of any such action at the expense of contractor.

If principles of governmental or public law are involved, the State reserves the right to participate in the defense of any action identified in this paragraph.

13. LIABILITY AND INSURANCE

Contractor agrees that during the entire duration of this Agreement, without expense to the Board, Contractor, Achieve and Xerox will procure and will maintain insurance of the kinds and in the amount hereinafter provided, from insurance companies authorized to do such business in the State of New York, covering all operations under this Agreement, whether performed by it or its employees. Before commencing performance under this Agreement, the Contractor shall cause Achieve and Xerox to provide the Board with standard ACORD form type certificates of insurance and Forms C-105.2 and DB-120.1 evidencing that all insurance required by this Agreement has been obtained. Contractor shall provide a copy to the Board of any notice it receives indicating its insurance policy, or Achieve's or Xerox's insurance policy, has been materially changed or canceled. Contractor and Xerox shall require their subcontractors to also carry and maintain insurance at subcontractor's expense and provide the applicable forms evidencing the subcontractors' insurance to the Board. Contractor assumes all liability to the Board for all subcontractors for direct damages connected with the products and services provided under this Agreement.

The kinds and amounts of required insurance are:

- (a) A policy covering the obligations of Contractor, Achieve and Xerox in accordance with the provisions of Chapter 41, Laws of 1914 as amended, known as the Workers' Compensation Law. The Agreement shall be void and of no effect unless Contractor, Achieve and Xerox procure such policy and maintains it until acceptance of the work.
- (b) A policy or policies of Commercial General Liability insurance covering the liability of Contractor, Achieve and Xerox with respect to all work performed by Contractor under this Agreement which together shall have limits of liability of

not less than \$5,000,000 during any single occurrence and not less than \$10,000,000 general aggregate during the policy period. Such commercial general liability policy or policies of insurance shall name the Board and the State of New York as additional insured's for claims caused by the negligent acts or omissions of Contractor. Such additional insured requirement may be met through a blanket additional insured basis. Such limits may be met through a combination of primary and excess liability insurance.

- (c) A policy covering the obligations of Contractor, Achieve and Xerox in accordance with the provisions of Article 9 of the New York State Workers' Compensation Law, known as the Disability Benefits Law. The Agreement shall be void and of no effect unless the Contractor, Achieve and Xerox procure such policy and maintains it until acceptance of the work.

14. CONFIDENTIALITY OF WORKERS' COMPENSATION AND DISABILITY BENEFIT CLAIMS INFORMATION

Contractor, its officers, agents and employees shall treat all Board documents, information and data, in any form, whether in Contractor's possession or which Contractor has access to, as confidential information to the extent required by the laws of the State of New York and the United States and any regulations promulgated thereunder. Unauthorized disclosure of personal, confidential, and/or medical information may result in civil and/or criminal penalties under New York State and Federal laws.

Workers' Compensation Law (WCL) §110-a prohibits any oral description of any Board record as well as the dissemination, release, disclosure, duplication, or publication of Board claim files except in certain limited situations as set forth therein. Pursuant to WCL §110-a (5), any person found in violation of this statute may be subject to criminal and civil prosecution, and fines, and may form the basis for termination of the contractual arrangement between the contractor and the Board.

All individually identifiable information relating to any claimant, employer, or insurance carrier shall be held confidential and shall not be disclosed by the Contractor, its officers, agents and employees without the prior written approval of the Executive Director of the Workers' Compensation Board or a designee.

The use of information obtained by Contractor in the performance of its duties to the Board shall be limited to purposes directly connected with such duties.

Contractor agrees that its officers, agents and employees shall not disclose, show or otherwise make available any portion of the materials or their contents to anyone other than its officers, agents and employees in connection with the performance of its duties to the Board. Contractor agrees to require employees of Xerox sign the Confidentiality Agreement and Certificate of Nondisclosure attached as Appendix F?, and to maintain such agreement for at least three years after the employee's service with Contractor is terminated. Contractor further agrees to require each agent to sign the attached Confidentiality Agreement and Certificate of Nondisclosure and

to maintain such agreement for at least three years after the agent's service with Contractor is terminated.

Contractor shall advise the Board of all requests made to Contractor for information described in this Agreement within twenty-four (24) hours of receipt of such request.

If a subpoena or other legal process concerning any information obtained in the performance of its duties is served on Contractor, Contractor shall notify, in writing, the Board promptly upon receipt of the subpoena or other legal process. Contractor shall cooperate with any lawful effort by the Board to contest the validity of the subpoena, to seek a protective order, or to pursue other legal process to protect the information. Contractor shall at all times limit the disclosure of any information to that which is required by law or legal process.

15. SCOPE OF WORK CHANGE

The parties recognize that events and circumstances may occur which would require a change in the scope of work to be performed. If the Board desires a change in scope, the Board shall provide Contractor's Upstate Regional Sales Manager with a *Scope of Work Change Request Form*, which shall include a description of the proposed change and a statement of why the change is desired. Contractor will review the *Scope of Work Change Request Form* and provide, at no additional charge to the Board, a proposal signed by its Managing Executive setting forth the anticipated impact of the proposed scope of work change.

It is recognized that a scope of work change may cause changes in price. The parties will enter into good faith negotiations in order to reach agreement on an equitable adjustment to the terms of the Agreement. Contractor's Proposal issued in response to a *Scope of Work Change Request Form* shall be used as the basis for negotiating any proposed changes in cost related to a scope of work change.

Contractor shall implement a scope of work change only upon written agreement of the parties specifying the changes, related prices, and revisions to timetables. All substantive changes to the scope of work contained in such written agreement shall be incorporated into an Amendment to the Agreement which must be approved by the Attorney General and Comptroller of the State of New York.

16. SUBCONTRACTING

- 16.1** Contractor was selected based on the experience, ability, and reputation of Contractor and its staff. Accordingly, Contractor shall not assign, convey, transfer, or subcontract any of its duties and responsibilities under this Agreement without the prior written consent of the Board, which consent shall not be unreasonably withheld. The Board has already provided such consent for the Contractor's primary subcontractor, Xerox. This requirement does not apply to individual employer-employee contracts, or to management incentives for employer-employee contracts, or to subcontracts that are executed prior to the effective date of this Agreement. Any existing pertinent subcontracts must be identified in the Proposal.

- 16.2 Any approved subcontract of Contractor's duties and obligations under this Agreement shall be in writing and contain provisions that are consistent with the provisions of this Agreement.
- 16.3 In addition to furnishing the Board with a redacted copy of any proposed subcontract for prior approval, Contractor shall also furnish to the Board the following:
- (a) A description of the supplies or services to be provided under the proposed subcontract;
 - (b) Identification of the proposed subcontractor; and
 - (c) Any other pertinent information or documentation requested by the Board, except for confidential information or trade secrets.
- 16.4 The Board shall be provided a copy of any approved subcontract within ten (10) days of its execution. The Board and the State of New York shall not be parties to any approved subcontract of Contractor's duties and obligations under this Agreement.
- 16.5 Contractor shall give the Board immediate notice in writing of any claim, legal action, or suit filed, and prompt notice of any claim made, against Contractor, by any subcontractor or contractor that may result in litigation related in any way to this Agreement or that may affect the performance of Contractor's duties under this Agreement.
- 16.6 Contractor shall not be relieved in any way of any responsibility, duty, or obligation of this Agreement by the award of any subcontract.
- 16.7 Contractor shall indemnify and save harmless the Board, its officers, employees, agents, and assigns from all claims against the Contractor. Nothing in this Agreement shall create or give to third parties any claim or right of action against the Contractor or the State of New York beyond such as may legally exist irrespective of this Agreement.

17. CONTRACTOR'S STATUS

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

18. NOTICES

Except where otherwise designated, all notices, demands, designations, certificates, requests, offers, consents, approvals, and other instruments given pursuant to this Agreement shall be in writing and shall be validly given when mailed by registered or certified mail, or hand delivered, or nationally recognized overnight courier, (i) if to the Board, addressed to the Board at its address set forth herein, and (ii) if to Contractor, addressed to Contractor at its address set forth herein. The parties may from time to time, specify any address in the United States as its address for purpose of notices under this Agreement by giving fifteen (15) days written notice to the

other party. The parties agree to mutually designate individuals as their respective representatives for purposes of this Agreement.

19. CAPTIONS

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

20. CONFLICT OF INTEREST

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

In addition, Contractor shall not offer any Board employee or agent of the Board any gratuity or benefit without prior written approval of the Board.

21. AGREEMENT EXTENSION WITHIN THE STATE

The Agreement grants the option to extend the terms and conditions of such Agreement to any other State or Municipal agency in New York.

22. SEVERABILITY

Should any provision of the Agreement be declared or found to be illegal, unenforceable, ineffective, or void, each party shall be relieved of any obligation arising from such provision; however, the balance of the Agreement, if capable of performance, shall remain in full force and effect.

23. PUBLIC OFFICERS LAW COMPLIANCE

Contractor must be aware of and comply with the requirements of the New York State Public Officers Law, all other appropriate provisions of New York State Law, and all resultant codes, rules and regulations from State laws establishing the standards for business and professional activities of State employees and governing the conduct of employees of firms, associations, and corporations in business with the State. Contractor guarantees knowledge and full compliance with those provisions for any dealings, transactions, sales, contracts, services, offers,

relationships, etc. involving the State and/or State employees. Failure to comply with those provisions may result in civil or criminal proceedings as required by law.

24. PERFORMANCE BOND

Xerox shall provide the Board with a performance bond in the amount of five million dollars (\$5,000,000) that is on an annually renewable bond form to be provided by Xerox's Surety Bond Broker. Three years after the issuance of the performance bond, the Board shall review Xerox's performance under this Agreement, and upon a mutual determination by the Board and Xerox that Xerox has performed satisfactorily under the Agreement, and such determination shall not be unreasonably withheld, the performance bond may decrease by one million dollars (\$1,000,000) for the remainder of the contract term. The Board and Contractor shall not make identical claims against the bond obtained by Xerox under either this Agreement or the Associate Member Agreement between Contractor and Xerox and the Statement of Work issued thereunder. The Board's rights to make a claim against the bond shall supersede that of Contractor. The Board shall not make a claim against the bond for Contractor's performance failures that are distinct from Xerox's performance of the services. Additionally, Contractor shall not make a claim against the bond in an effort to make itself legally and/or financially whole. All claims in the aggregate made by both the Board and Contractor shall not exceed the stated bond amount above.

25. LEGAL ASSURANCE OF AUTHORITY TO PERFORM

In consideration of the within premises, Contractor warrants and represents to the Board that:

- (a) Contractor has authority to perform all duties required of it by the Agreement; and
- (b) Contractor is qualified to do business in the State of New York.

Contractor shall give immediate notice to the Board of any event or circumstance which may affect the validity of the representations herein contained and shall take any and all actions required to preserve its legal authority to perform the Agreement.

26. MINORITY & WOMEN OWNED BUSINESS ENTERPRISES

The Contractor agrees to make good faith efforts to promote and assist the participation of certified minority-business enterprises (MBE) and women-owned business enterprises (WBE) as subcontractors and suppliers on this project for the provision of services and materials.

27. IRAN DIVESTMENT ACT

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) has developed 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 prohibited entities list is posted on the OGS website.

By entering into this Agreement, Contractor (or any assignee) certifies that it will not utilize on such Agreement any subcontractor that is identified on the prohibited entities list.

Additionally, Contractor agrees that 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. 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 Board may approve a request for assignment of the Agreement.

During the term of the Agreement, should the Board receive information that a person is in violation of the above-referenced certification, the Board 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 Board 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 Board reserves the right 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.

Signatories

The undersigned signatories represent and warrant that they have full authority to enter into this Agreement on behalf of the respective counterparts.

NEW YORK STATE WORKERS' COMPENSATION BOARD

By: Nancy Behreas
Name: Nancy Behreas
Title: Office Services Manager
Date: 11/1/13

NEW YORK STATE INDUSTRIES FOR THE DISABLED, INC.

By: Karen DiBella
Name: Karen DiBella
Title: V.P. Contract Administration & Quality Management
Date: 10/23/13

ATTORNEY GENERAL'S SIGNATURE APPROVED AS TO FORM NYS ATTORNEY GENERAL

Dated: NOV 04 2013

Benjamin L. Maggi
BENJAMIN L. MAGGI
ASSISTANT ATTORNEY GENERAL

COMPTROLLER'S SIGNATURE Thomas P. DiNapoli

Dated: Charlotte E. Brown 11/29/13