NEW YORK STATE DEPARTMENT OF LABOR

Combined

Attachment A-1 Program Specific Terms and Conditions

Attachment A-2 Federally Funded Grants Specific Terms & Conditions (if applicable)

Planning Summary

Contractor's Designee

Contractor: _____ Contract Number _____

Address: _____ Phone: _____

Liaison: _____ Fax: _____

Address: _____ _____

E-Mail: _____

NYSDOL Program Office/Designated Refund Office

Liason: _____ Phone: _____

Address: _____ Fax:

E-Mail: _____

Increases

Submittal: FY _____ ____ Original Funding From: _____ to _____

Decreases

Submittal: FY _____ ____ Original Funding From: _____ to _____

_____ Changes end date from from _____ To _____

Funding Source: _____ Contract Dates _____ to _____

Program: _____ Total Obligation: $ _____

Original/SFY				SFY			TOTAL	$
	Year	Amount	Lapse		Year	Amount	Lapse	
Renewal I/SFY				SFY			TOTAL	$
	Year	Amount	Lapse		Year	Amount	Lapse	
Renewal II/SFY				SFY			TOTAL	$
	Year	Amount	Lapse		Year	Amount	Lapse	
Renewal III/SFY				SFY			TOTAL	$
	Year	Amount	Lapse		Year	Amount	Lapse	
Renewal IV/SFY				SFY			TOTAL	$
	Year	Amount	Lapse		Year	Amount	Lapse	

COMBINED

ATTACHMENT A-1

Program Specific Terms and Conditions

ATTACHMENT A-2
Federally Funded Grants (if applicable)

NEW YORK STATE DEPARTMENT OF OF LABOR (STATE)

A. Contract Performance

In addition to Master Contract Section I.E., the following provisions shall apply to the Contractor's performance responsibilities:

1. Scope and Statement of Work: The Contractor shall perform the work of this Master Contract within the period indicated on its Face Page and within any more stringent timeframes that may be provided in Attachment B and C; in strict accordance with the Request for Proposals (RFP), its Proposal and the Addendum to Proposal that may have been negotiated, if applicable; and in compliance with New York State and federal laws, rules and regulations including any requirements established by the State, and, with the provisions of Office of Management and Budget (OMB) Circulars A-87 or A-122, or A-21 and A-133 as applicable, and the accounting requirement thereunder even where federal funds are not involved.

2. The parties understand and agree that any and all deviations or exceptions taken by Contractor to the Department's Request for Proposal are hereby withdrawn except only to the extent that such exceptions or deviations have been explicitly incorporated into this Master Contract.

3. The Contractor will identify the person(s) who will be responsible for directing the work to be done under this Master Contract. No change or substitution of such responsible person(s) will be made without prior approval in writing from the State, to the degree that such change is within the reasonable control of the Contractor.

4. The Contractor shall be responsible for the provision of necessary equipment and services for Contractor's staff, pursuant to and described in the narratives and budgets contained in the Attachments.

5. The Contractor ensures that the grounds, structures, buildings and furnishings at the program site(s) used under this Master Contract are maintained in good repair and free from any danger to health or safety and that any building or structure used for program services complies with all applicable zoning, building, health, sanitary, and fire codes.

6. The failure of the Department to exercise any right or to require strict performance of any provision will not waive or diminish the Department's right thereafter to exercise such right or to require strict performance of any provision.

7. This Master Contract constitutes the entire agreement between the parties hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and this Agreement shall not be changed, modified or altered in any manner except by an instrument in writing executed by both parties hereto.

B. Modifications

In addition to Master Contract Section I.F., the following provision shall apply to modifications:

1. The Contractor shall promptly request prior approval from the State for modification of the Master Contract whenever there is a change in the scope or objectives of the program, the funding level, and if it is deemed necessary, the length of the Master Contract to meet program objectives. Modifications will be necessary for any of the following changes:

a) An increase or decrease in funding;

b) A transfer of funds among program activities or budget cost categories;

c) Any change to any of the dates specified for any specific program activity which would take that program activity outside the contract time period;

d) A change in any of the participants specified to receive any specific program activity;

e) A change in any of the specific program activities which make up the program;

f) A decrease of 15 percent or more in the number of individuals to be served in planned enrollment for program activities, or in the number of individuals served within significant client groups; and

g) A change in the dates of the Master Contract.

2. The Contractor shall prepare and submit modifications with complete justification in sufficient time to allow processing and approval prior to the effective date of the changes.

3. Modifications to extend the term of the Master Contract are to be submitted at least 60 days prior to the original termination date.

4. The Contractor shall prepare and submit modifications in accordance with the requirements established by the State.

5. If the initial Master Contract with the State is a Planning Grant, the Contractor agrees to submit a fully completed contract within 30 days of submission of the Planning Grant. A fully completed Master Contract shall include a Program Narrative and budget in the detail and format required by the State.

6. Furthermore, while it will not require a Master Contract modification, any changes to the dates specified in the Master Contract for a program activity, where such dates remain within the contract time period, requires that notification be given to the appropriate State grant manager.

C. Notices

1. In accordance with Master Contract Section I.J., notices to the State shall be addressed to the Program Office specified on the Planning Summary for this contract, which is found on page 1 of this combined Attachment A-1 & A-2.

2. In accordance with Master Contract Section I.J., notices to the Contractor shall be addressed to the Contractor's designee specified on the Planning Summary for this contract, which is found on page 1 of this combined Attachment A-1 & A-2

D. Term

Master Contract Section II.A is amended to add the following at the end thereof:

Notwithstanding any other provision of the Master Contract, upon expiration of the contract term the State may, in its sole discretion, extend the Master Contract on a non-funded basis for a period not to exceed twelve months (unless otherwise specified in the Request for Proposals, if applicable).

E. Renewal

In addition to Master Contract Section II.B., the following provisions shall apply to renewals:

1. Funding on this Master Contract will be provided as expressly provided on the Face Page. Renewals of this Master Contract at the end of each period will be allowed only if authorized in the RFP and on the Face Page, contingent on the State obtaining funds for the subsequent fiscal year, as well as satisfactory performance by the Contractor as defined by the State's performance standards.

2. For contracts subject to renewal funding, to obtain an additional period of funding, the Contractor must submit all required documents within 30 days of notification by the State that the contract will be renewed for an additional period. Such documents must reflect the amount of funding provided by the State as indicated in the above mentioned notification from the State. In addition, the Contractor must provide a complete budget summary with full details of all planned program expenditures and any other information required by the State.

3. The State shall not be liable for any obligation incurred by the Contractor which is in excess of the funding set forth on the Face Page of the Master Contract or any subsequent modification of the Master Contract.

F. Travel Expenses

Master Contract Section III.A.5 regarding travel expenses does not apply to performance based milestone contracts, which will be reimbursed in accordance with the milestone payment schedule as set forth in Attachment D.

G. Subcontractors

In addition to Master Contract Section IV.B., the following provisions shall apply to subcontractors/subcontracting

The Contractor may not assign, transfer, convey, sub-let or otherwise dispose of its right, title and interest in this Master Contract, or its power to execute this Master Contract to any other person, company or corporation without the previous written consent of the State. In all cases where a Contractor with the State subcontracts any portion of that Master Contract, the Contractor retains full liability and responsibility for assuring that all funds under that Master Contract, including those to any subcontractor(s) are expended in compliance with:

- The State laws, rules and regulations governing the expenditure of such funds;

- For Federally funded contracts, in addition to the above, the Federal laws, rules and regulations governing the expenditure of such funds; and

- The provisions of this Master Contract including but not limited to budget specificity and reasonable cost allocation to line item.

The Contractor will be responsible for identifying in the Master Contract its plan for subcontracting. When actual subcontracting details are not known, subcontract information - including a brief, but definitive, narrative description of each program or service to be subcontracted, with whom subcontracting will be implemented (if known), the anticipated outcomes and the projected budget - will be incorporated into the Master Contract. The Master Contract may then be conditionally approved.

When the actual subcontract is executed, the Contractor must provide detailed subcontract information (copy of subcontract will suffice) to the State within 15 days after execution. If a copy of the subcontract is not provided, the details required will include:

a) name of subcontractor;
b) services to be performed;
c) program design;
d) anticipated outcomes; and
e) line item budget - - with cost category explanations.

Failure to comply with the above may result in the withholding of funds, suspension and/or termination of the Master Contract. Failure to resolve within 30 days any non-compliance issues identified by the State 's review of the subcontract information may result in the withholding of further funds until such time as the non-compliance issues are resolved.

H. Property:

In addition to Master Contract Section IV.D, the following provisions shall apply to property:

This section H. does not apply to performance based milestone contracts, which will be reimbursed in accordance with the milestone payment schedule as set forth in Attachment D.

In non-performance based milestone contracts, unless the cost is totally ascribable to the grant, these costs must be allocated according to an allocation plan which meets the requirements of OMB Circulars A-87 or A-122, or A-21.

Example 1: Contractor A uses its copier for both grant and non-grant business. In month 2 it makes 1000 copies, 100 of which are for the grant. Its total cost for the copier and supplies for that month is $200.00. The cost allocation plan allocates copier costs according to the number of copies produced in a given month. Contractor A reports copier costs of $20.00 for that month.

Example 2: Contractor B makes space in its office for work on the grant. Contractor B has one employee working on the grant for 50% of his/her time. The space used by the employee is 1/10th of the square footage of the office space. Contractor B pays $2,000.00 a month in rent on the entire office. Contractor B's cost allocation plan allocates its lease payments according to the space used in a given month and the percentage of time that that space is used for grant purposes. Contractor B reports rent expense of $100.00 for that month.

Equipment

For Federally funded contracts, the requirements for Equipment in the Master Contract will apply.

Space

In situations where the Contractor is receiving reimbursement for Space Rental, it must be clearly indicated in the Budget Narrative section. In addition, the Budget Narrative must also indicate the basis used in developing the rental charge. In cases where the contractor owns the space, the contractor must indicate the basis used in developing the usage charge.

I. Use Of Material, Equipment, Or Personnel

In addition to Master Contract Section IV.C, the following provisions shall apply to program/interest income:

Program/Interest Income

The Contractor shall report in the manner prescribed by the State all gross interest income or program income earned by activities supported under this Master Contract. Such income earned during the grant period shall be transmitted at the termination of this Master Contract to the State, unless the State directs otherwise in writing.

J. Records and Audits

In addition to Master Contract Section IV.E., the following provisions shall apply to retention of records under the Master Contract:

The Contractor shall retain and make available any and all grant records to representatives of the State and the the State Comptroller, for inspection, audit, transcription or reproduction at all reasonable times during the course of the Master Contract and for the period set forth as follows:

a) For the period of six years after the submission of the final expenditure report, or for contracts paid on a performance basis, the final voucher by the Contractor. If the Master Contract is terminated during the course of the operating period, for a period of six years from the date of the final settlement Master Contract.

b) If, prior to the expiration of the six year retention period, any litigation or audit is begun or a claim is instituted involving the Master Contract covered by the records beyond the six year period until one year after the litigation, audit findings, or claim involving the records has been resolved.

c) When records subject to retention requirements are transferred to the State the six year retention period shall not apply. The Contractor need not retain duplicates of records transferred to or maintained by the State.

d) Notwithstanding paragraphs a, b, and c, the Contractor shall maintain a record of each participant's participation in the program, including dates of entry and termination in each activity and shall retain such records for each participant for a period of five years from the date of enrollment into the program.

The Contractor is authorized to substitute microfilm or electronic copies in lieu of original records in accordance with the regulations of the State.

K. Publicity

For purposes of Master Contract Section IV.G., "Publicity" also includes references to the State of New York in any document of forum.

L. Matching Requirement

If matching contributions are indicated on the budget summary of this Master Contract, match must be reported in conjunction with requests for reimbursement and must be supported by a summary of costs by category of expense. All required match must be fully incurred and reported during the term of the Master Contract. The appropriate support documentation must be maintained on the Contractor's premises for audit purposes in accordance with the record retention schedules provided herein. If Contractor fails to provide match required under the Master Contract, payment of contract funds may be withheld and contract payments may be reduced accordingly

M. Deobligations/Sanctions

If the State decides that the Contractor is not achieving the contract's goals, payments to the Contractor may be delayed or withheld. If this failure to meet goals is not corrected, the contract may be terminated or modified with 30 days notice from the State to the Contractor. This decision to terminate or modify may be appealed in accordance with Provision Q (Disputes) of these Terms and Conditions.

N. Disputes

Except as otherwise provided in this Master Contract, any dispute concerning a question of fact which is not disposed by Master Contract shall be decided by the Commissioner of Labor, who shall furnish a copy

thereof to the Contractor. Appeal shall be handled in accordance with the State 's procedural rules for hearings (12 NYCRR Part 701). A request for hearing must be submitted to Commissioner of Labor within 30 days of receipt. The decision of the Commissioner of Labor, shall be final and conclusive unless determined by a court or competent jurisdiction to have been fraudulent, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence.

O. Program Audits/Recoupment of Funds

The State shall have the right to audit or review the Contractor's performance and operations as related to this Master Contract and/or to retain the services of qualified independent auditors or investigators to perform such audit and review on the State's behalf. If the review indicates that the Contractor has violated or has not complied with the material terms of the Master Contract or any other Master Contract with the State, or has abused or misused the funds paid to the Contractor, the Contractor agrees to pay to the State any costs associated with the review. In addition, the rights of the State shall include, but not be limited to:

- Recovery of any funds expended in violation of the Master Contract;
- Suspension of Payments;
- Termination of the Master Contract; and/or
- Employment of another entity to fulfill the requirements of the Master Contract.

The Contractor will assist the State in transferring the operation of the contracted services to any other entity selected by the State in a manner that will enable the State or clients to continue to receive services in an on-going basis, including, but not limited to, notifying clients of the new entity to which the services will be transferred and the effective date of the transfer, providing the new entity promptly and at no charge with a complete copy of the clients' records and all other records necessary to continue the provision of the transferred services, and transferring any equipment purchased with funds provided under this Master Contract.

Nothing herein shall preclude the State from taking actions otherwise available to it under law including but not limited to the State's "Set-Off Rights" and "Records-Audits" provisions contained in Master Contract for Grants Standard Terms and Conditions.

The Contractor agrees to cooperate fully with any audit or investigation the State or any agent of the State may conduct and to provide access during normal business hours to any and all information necessary to perform its audit or investigation. If the Contractor fails to cooperate, the Attorney General, State Comptroller, the State, and any representatives specifically directed by the State Comptroller or the State shall take possession of all books, records and documents relating to this Master Contract without prior notice to the Contractor. The State will return all such books, records and documents to the Contractor upon completing the official purposes for which they were taken.

The Contractor agrees that all Master Contracts between the Contractor and a subcontractor or consultants for the performance of any obligations under the Master Contract will be by written contract (subcontract) which will contain provisions including, but not limited to, the above specified rights of the State.

At the termination of any program grant, the State may recoup funds provided to Contractor if it is determined pursuant to an audit that the Contractor failed to meet its performance goals, failed to provide match, received payments for expenses that cannot be verified with the appropriate documentation, abused or misused funds or otherwise failed to comply with federal or State statutory requirements of the grant.

P. **Subrecipient Audits** (Only applies to Master Contracts containing federal monies.)

All Contractors and subcontractors who are determined to be subrecipients pursuant to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" and 29 CFR Part 99 are subject to the following:

All states, local governments and non-profit organizations that expend $500,000 or more in Federal funds under more than one Federal program in any fiscal year must obtain an independent, organization-wide, single audit conducted in accordance with OMB Circular A-133.

In the alternative, any state, local government or non-profit organization, that expends $500,000 or more under only one Federal program, and that Federal program's laws, regulations or grant agreements do not require a financial statement audit of the auditee, may elect to have a program-specific financial and compliance audit.

For-profit organizations that expend $500,000 or more in Federal funds in any fiscal year must have either an independent, organization-wide, single audit conducted in accordance with OMB Circular A-133 or a program-specific financial and compliance audit.

The audits for Contractors are to be submitted within one month after receipt of the auditor's report or no later than nine months after the end of the Contractor's fiscal year to the following address:

New York State Department of Labor
Division of Employment & Workforce Solutions
Office of Contract Review and Expenditure Control
Room 425
Albany, New York 12240

Contractors are responsible for collecting audits from subcontractors determined to be subrecipients pursuant to OMB Circular A-133 and 29 CFR Part 99 and must make the audits available for review or inspection.

Any Contractor that expends less than $500,000 in Federal funds are exempt from Federal audit requirements for that fiscal year, but records must be made available for review or audit by appropriate officials of the U.S. Department of Labor, New York State Department of Labor, and U.S. General Accountability Office (GAO).

To determine when a Federal award has been expended, the Contractor should refer to OMB Circular A-133 and 29 CFR Part 99.205.

The Office of Contract Review and Expenditure Control shall evaluate any findings and recommendations in the Contractor's final audit report along with the related correspondence and Corrective Action Plan

(CAP), which may include the expected auditee action to repay disallowed costs, make financial adjustments or to take other action, submitted by the auditee as part of the Department's audit resolution procedures. If the Office of Contract Review and Expenditure Control is in agreement with all aspects of the CAP, they will issue a management determination indicating the acceptance of the CAP. If the Contractor disputes the management determination of any finding, it has thirty (30) days from the date of this letter to request an independent hearing.

Q. Publications/Copyrights/Patents

All materials developed and created by Contractor for the State under this Master Contract will be owned by the State, will be considered to be "works made for hire" as defined in the U.S. Copyright Act, and are hereby assigned to the State. Contractor agrees to execute all papers and perform all other acts reasonably necessary to assist the other to obtain and register copyrights and to effectuate the intention of this Master Contract.

For all other pre-existing works, the State and the State of New York expressly reserve the right to a royalty-free, non-exclusive and irrevocable license to reproduce, publish, distribute or otherwise use, in perpetuity, any and all copyrighted or copyrightable material resulting from this Master Contract or activity supported by this Master Contract. All publications by the Contractor covered by this State shall expressly acknowledge the State's right to such license.

All of the license rights so reserved to the State and the State of New York under this paragraph are equally reserved to the U.S. State of Labor, as applicable, and subject to the provisions on copyrights contained in such federal agencies' regulations if the Master Contract is federally funded.

The Contractor agrees that at the completion of any scientific or statistical study, report or analysis prepared pursuant to this Master Contract, it will provide to the State, at no additional cost, a copy of any and all data supporting the scientific or statistical study, report or analysis, together with the name(s) and business address(es) of the principal(s) producing the scientific or statistical study, report or analysis. The Contractor agrees and acknowledges the right of the State to release the name(s) and business address(es) of the principal(s) producing the scientific or statistical study, report or analysis, together with a copy of the scientific or statistical study, report or analysis and all data supporting the scientific or statistical study, report or analysis.

The Contractor agrees that any and all inventions, conceived or first actually reduced to practice in the course of, or under this Master Contract, or with monies supplied pursuant to this Master Contract, shall be promptly and fully reported to the State. Determination as to ownership and/or disposition of rights to such inventions, including whether a patent application shall be filed, and if so, the manner of obtaining, administering and disposing of rights under any patent application or patent which may be issued, shall be made pursuant to all applicable law and regulations.

R. Specific Prohibitions

1. No Gratuities: The Contractor warrants that it did not secure the Master Contract as the result of gratuities.

2. Covenant Against Contingent Fees: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Master Contract upon an Master Contract or understanding for a commission, percentage, brokerage, or contingent fee, or breach or violation of this warranty. The State shall have the right to annul this Master Contract without liability or, in its discretion, to deduct from the award, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

3. Non-Sectarian**:** The funds provided to the Contractor are for secular purposes and will be used to provide employment and/or training services as described in the Master Contract to persons regardless of religious affiliation and shall be performed in a manner that does not discriminate on the bases of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs. No funds will be used for the advancement of a particular religion.

S. Training

All contracts and/or subcontracts must be approved by the State and licensed or registered by the NYS Education Department where applicable.

T. Survival Of Covenants, Representations And Warranties

All covenants, representations and warranties of the Contractor shall survive the termination of this Master Contract.