

**New York State Department of Civil Service**  
**and**  
**Excellus Health Plan, Inc.**  
**AGREEMENT NO. C000665**

THIS Agreement is entered into by and between the New York State Department of Civil Service ("Department" or DCS), having its principal office at the Empire State Plaza, Agency Building #1, Albany, New York 12239 and Excellus Health Plan, Inc., d/b/a HMO Blue having its principal office at 165 Court Street, Rochester, NY 14647, a health maintenance organization hereinafter referred to as the "Contractor," and collectively referred to as the "Parties."

**WITNESSETH**

WHEREAS, Civil Service Law Article XI authorizes and directs the President of the State Civil Service Commission and New York State Department of Civil Service (President) to establish a health benefit plan for the benefit of State Employees, Retirees, and their Dependents, and for the benefit of Participating Employers, Retirees, and their Dependents; and

WHEREAS, Civil Service Law Article XI authorizes and directs the President to purchase a contract or contracts to provide the benefits under the plan of health benefit; and

WHEREAS, New York State, through the Department, oversees the New York State Health Insurance Program (NYSHIP) for New York State Employees and Retirees and their Dependents; and

WHEREAS, on April 23, 2015, the Department of Civil Service issued Specifications for Health Maintenance Organizations entitled "2016 HMO Specifications" to secure the services of qualified Health Maintenance Organizations for participation in the New York State Health Insurance Program (NYSHIP); and

WHEREAS, after thorough review by the State and the New York State Joint Labor Management Committees on Health Benefits of Proposals received in response to the Specifications, the Contractor represented its ability to deliver a Program Services for NYSHIP; and

WHEREAS, the Department, in reliance upon the expertise of the Contractor, desires to engage the Contractor to deliver a Program Services, pursuant to the terms and conditions set forth in this Agreement;

THEREFORE, the Parties agree as follows:

**ARTICLE I: DEFINITION OF TERMS**

- 1.1.0** **Affiliate** means a person or organization which, through stock ownership or any other affiliation, directly, indirectly, or constructively controls another person or organization, is controlled by another person or organization, or is, along with another person or organization, under the control of a common parent.
- 1.2.0** **Agreement** means the contract that results from these Specifications between the Department and the Contractor.
- 1.3.0** **Business Day(s)** means every Monday through Friday, except for days designated as Business Holidays.
- 1.4.0** **Business Holiday(s)** means legal holidays observed by the State. For Medicare Advantage Plan and Medicare Advantage Plans with Prescription Drug Plan, Business Holidays must additionally comply with Chapter 3, section 80.1 of the Medicare Managed Care Manual.
- 1.5.0** **Calendar Year/Annual** means a period of 12 months beginning with January 1 and ending with December 31.
- 1.6.0** **Centers for Medicare and Medicaid Services (CMS)** means the Federal Agency within the United States Department of Health and Human Services that is responsible for administration and oversight of various Medicare programs.
- 1.7.0** **Child(ren)** means children under 26 years of age, including natural children, legally adopted children, children in a waiting period prior to finalization of adoption, Enrollee stepchildren and children of the Enrollee's domestic partner. Other children who reside permanently with the Enrollee in the Enrollee's household and are chiefly dependent on the Enrollee are also eligible, subject to a statement of dependence and documentation.
- 1.8.0** **Commercial Plan** means the Plan submitted by the Contractor pursuant to this Agreement through which each Enrollee is entitled to receive comprehensive health benefits not obtained through a Medicare Advantage Plan.
- 1.9.0** **Coverage** means the health services and insurance benefits provided by the Contractor pursuant to this Agreement.

- 1.10.0 **Creditable Coverage** means prescription drug coverage that is deemed equivalent to Medicare Part D.
- 1.11.0 **Day(s)** means calendar day(s) unless otherwise noted in this Agreement.
- 1.12.0 **DCS or Department** means the New York State Department of Civil Service.
- 1.13.0 **Dependent** means the spouse, domestic partner, and children under twenty-six (26) years of age of an Enrollee. Young adult dependent children age twenty-six (26) or over are also eligible if they are incapable of supporting themselves due to mental or physical disability acquired before termination of their eligibility for coverage under the New York State Health Insurance Program.
- 1.14.0 **Dependent Survivor** means the unremarried spouse, dependent child, or domestic partner who has not acquired another domestic partner, of an Enrollee who died after having had at least ten (10) years of service, who was covered as a dependent of the deceased Enrollee at the time of the Enrollee's death and who elects to continue coverage under NYSHIP following the three (3) month extended benefits period.
- 1.15.0 **Disabled Lives Benefit** means the benefits provided to an Enrollee who is Totally Disabled on the date coverage ends. The benefits are provided on the same basis as if coverage had continued with no change until the day the Enrollee is no longer Totally Disabled or for ninety (90) days after the date the coverage ended, whichever is earlier.
- 1.16.0 **Employee** means any person defined as an Employee as defined in 4 NYCRR Part 73, as amended, or as modified by collective bargaining agreement.
- 1.17.0 **Employer** means Employer as defined in 4 NYCRR Part 73, as amended.
- 1.18.0 **Enrollee(s)** means those Employees and Retirees eligible for NYSHIP coverage as set forth in the regulations of the President of the Civil Service Commission at 4 NYCRR Part 73, and who have elected to receive HMO coverage under the terms and conditions of this Agreement.
- 1.19.0 **Enrollee Certificate of Insurance (Certificate)** means a comprehensive description of benefits provided through the HMO plan by the Contractor pursuant to this Agreement.
- 1.20.0 **ET** means prevailing Eastern Time.

- 1.21.0 Health Maintenance Organization (HMO)** means any person, natural or corporate, or any groups of such persons who enter into an arrangement, agreement or plan, or any combination of arrangements or plans, which proposes to provide or offer, or which does provide or offer, a comprehensive health service plan for which the Contractor has current certification or licensure in accordance with the statutes and regulations of the State of New York and/or may operate outside the State of New York by federal qualification subject to appropriate jurisdiction for certification and oversight.
- 1.22.0 HMO Member** means the Enrollee or any Dependent that is eligible, enrolled and covered by the HMO Plan.
- 1.23.0 Joint Labor Management Committee (JLMC)** means a committee consisting of representatives of the State's collective bargaining units, the Department of Civil Service, and the Governor's Office of Employee Relations (GOER) which is charged with the responsibility to cooperatively develop and oversee administration of health care programs for State-represented Employees and to make mutually agreed upon changes to health insurance plan benefits.
- 1.24.0 Key Subcontractor(s)** means those vendors with whom the Contractor subcontracts to provide Program Services and incorporated as a part of the Contractor's Program Team. Key Subcontractors include all vendors who will provide \$100,000 or more in Program Services over the term of the Agreement that results from these Specifications, as well as any vendor who will provide Program Services in an amount lower than the \$100,000 threshold and who is a part of the Contractor's Program Team.
- 1.25.0 Medicare Advantage Plan (MAP)** means health benefits coverage offered under a policy or contract by an Medicare Advantage organization that includes a specific package of health benefits offered at a uniform premium and uniform level of cost-sharing to all Medicare beneficiaries residing in the Service Area (or segment of the Service Area) of the MAP.
- 1.26.0 Medicare Advantage with Prescription Drug (MAPD) Plan** means health benefits coverage offered under a policy or contract by a Medicare Advantage organization that includes a specific package of health benefits, as well as qualified prescription drug coverage, as defined at 42 CFR 423.100 and in section 20.1 of Chapter 5 of the Prescription Drug Benefit Manual, under Part D of the Social Security Act, as amended.

- 1.27.0 **MMCM** means the Centers for Medicare and Medicare Services Medicare Managed Care Manual.
- 1.28.0 **MAPD Evidence of Coverage (EOC)** means a comprehensive description of services and benefits provided to MAPD Members through the MAPD Plan. The EOC also defines the rights and responsibilities of the Member and the MA Organization under the MAPD Plan.
- 1.29.0 **MAPD Member(s)** means the MAPD Enrollee(s) or any Dependent that is eligible, enrolled and covered by the MAPD Plan.
- 1.30.0 **MAPD Enrollee(s)** means the eligible Employee or Retiree who is eligible to receive MAPD benefits under the rules, regulations and conditions of the NYSHIP and CMS, and is enrolled in the MAPD Plan.
- 1.31.0 **NYS** means New York State.
- 1.32.0 **NYSHIP** means the New York State Health Insurance Program.
- 1.33.0 **Offeror** means a person or entity that submits a Proposal in response to these Specifications.
- 1.34.0 **Option Transfer Period** means the period of time established by the Employer during which an Employee may transfer enrollment from one available health benefit plan (either an HMO or indemnity plan) to a different available plan.
- 1.35.0 **Participating Employer (PE)** means a public authority, public benefit corporation, or other public agency, subdivision, or quasi-public organization of the State which elects, with the approval of the President of the Civil Service Commission, to participate in the New York State Health Insurance Program.
- 1.36.0 **Periodic Recruitment** means the State's reserved right to consider additional HMOs starting on the one year anniversary of the award start date or at any time deemed to be in the best interests of the State. Potential additional HMOs shall be required to submit an original bid document and, where applicable, bids shall be evaluated under the original "Specifications For Health Maintenance Organizations Participation in the New York State Health Insurance Program" requirements. An addendum containing additional applicable statutory requirements currently in effect at the time of the periodic recruitment may be added to the recruitment. The State is not required to award on offers under Periodic Recruitment.

- 1.37.0 **Plan** means the proposed health plan submitted by the Contractor for NYSHIP.
- 1.38.0 **Plan Year** means the period from January 1<sup>st</sup> to December 31<sup>st</sup> in each year covered by the Agreement, unless specified otherwise.
- 1.39.0 **President** means the President of the New York State Civil Service Commission and the Commissioner of the DCS.
- 1.40.0 **Program Services** means all of the services to be provided by the Contractor as set forth in these Specifications.
- 1.41.0 **Proposal or Submission** means the Contractor response to the 2016 HMO Specification including all responses to supplemental requests for clarification, information, or documentation submitted during the course of the Procurement.
- 1.42.0 **Regulations of the President of the Civil Service Commission** means those regulations promulgated by the DCS pursuant to Civil Service Law, Article XI, as amended, including but not limited to those rules and regulations found at 4 New York Code of Rules and Regulations (NYCRR) Part 73, as amended.
- 1.43.0 **Required Annual Submission** means the Contractor's response to program requirements in years 2 – 5 of the Agreement that results from these Specifications, including all responses to supplemental requests for clarification, information or documentation during the term of the Agreement.
- 1.44.0 **Retiree** means any person defined as a Retiree pursuant to the terms of 4 NYCRR Part 73, as amended.
- 1.45.0 **Service Area** means the approved counties in which a Contractor is authorized to offer services.
- 1.46.0 **Specifications** means the document entitled "2016 HMO Specifications for the New York Health Insurance Program (NYSHIP)" dated April 23, 2015.
- 1.47.0 **State** means New York State as a whole.
- 1.48.0 **Summary of Benefits and Coverage (SBC)** : means a federally mandated document that accurately describes the NYSHIP group benefits and coverage.

- 1.49.0** **SERFF** means the System for Electronic Rate and Form Filing system used by the DFS for rate filings.
- 1.50.0** **Total Disability and Totally Disabled** means that because of a medical or mental health/substance abuse condition, the Enrollee, cannot perform his/her job or the Dependent cannot perform the normal activities of a person that age.
- 1.51.0** **Vestee** means a former Employee who is entitled to continue benefits under NYSHIP because he/she has met all the requirements for NYSHIP coverage as a Retiree, except for age eligibility for pension, at the time employment terminates.

## **ARTICLE II AGREEMENT DURATION AND AMENDMENTS**

- 2.1.0** This Agreement shall be subject to the approval of the New York State Attorney General's Office ("AG") and the NYS Office of the State Comptroller ("OSC"). The term of the Agreement is for the period starting January 1, 2016 through and including December 31, 2020, and subject to the termination provisions contained herein.
- 2.2.0** This Agreement is subject to amendment(s) only upon consent of the Parties, reduced to writing and approved by the AG and OSC.
- 2.3.0** The Contractor's continued participation in NYSHIP for each year subsequent to the initial year of the term is contingent upon the Department and the JLMC's review and approval of the following documents. The Contractor shall submit Required Annual Submission documents to the Department by the established deadline, including, but not limited to:
- 2.3.1** New York State (NYS) Department of Health Certification for HMOs to operate within an approved Service Area and the ability to provide comprehensive hospital, medical and prescription drug benefits for covered Enrollees;
  - 2.3.2** Current HMO status based on the National Committee on Quality Assurance (NCQA);
  - 2.3.3** Key Subcontractors listing;
  - 2.3.4** Service Area expansion requests, if any;
  - 2.3.5** Submission to offer or discontinue a Medicare Advantage Plan;
  - 2.3.6** Most recent annual filing of Schedule M (Complaints); and
  - 2.3.7** Coverage and benefit documents, including but not limited to:

- 2.3.7a** Enrollee Certificate of Insurance
- 2.3.7b** MAP and MAPD Evidence of Coverage
- 2.3.7c** Choices - HMO e-page
- 2.3.7d** Schedule of Benefits
- 2.3.7e** Side by Side comparison of changes in benefits from current year to upcoming year
- 2.3.7f** Coverage Riders and Addendums
- 2.3.7g** Annual communication materials to Enrollees
- 2.3.7h** Summary of Benefits and Coverage (SBC)
- 2.3.7i** Other required submission material

- 2.4.0** The Required Annual Submission, listed in Section 2.30 of this Agreement shall be the basis of the Contractor's continuation in NYSHIP unless the Department chooses to amend any of the Required Annual Submission documents. Should the requirements be amended, the Department shall notify the Contractor in writing no later than thirty (30) days prior to the requested due date of the Required Annual Submission. Contractor's failure to submit the Required Annual Submission for the JLMC's review or failure to obtain the JLMC's approval by the Department's established deadlines may result in the Department's termination of the Agreement or placement of restrictions on the Contractor's participation in NYSHIP.
- 2.5.0** If the JLMC approves continuation, the Contractor shall be required to enter into such annual renewal at a premium rate to be specified in accordance with Article XIV, of this Agreement entitled, "Determination of Rate Basis, Payment of Premiums and Grace Period."
- 2.6.0** During years 2 – 5 of the term of the Agreement, the JLMC, at its sole discretion, may determine that a geographic region is underserved by HMO coverage. In such circumstances, the Department will request current NYSHIP participating HMOs to submit expansion requests into the designated underserved area as part of the Required Annual Submission. All expansion requests into underserved areas must be contiguous to the HMO's approved NYSHIP Service Area.
- 2.7.0** This Agreement is subject to amendment(s) only upon the mutual consent of the Parties, reduced to writing and approved by the Office of the Attorney General and the Office of the State Comptroller of the State of New York.



### **Article III: INTEGRATION**

- 3.1.0** This Agreement, including all Exhibits, copies of which are attached hereto and incorporated by reference, constitutes the entire Agreement between the Parties. All prior Agreements, representations, statements, negotiations, and undertakings are superseded hereby.
- 3.2.0** All statements made by the Department shall be deemed to be representations and not warranties.

### **ARTICLE IV: DOCUMENT INCORPORATION AND ORDER OF PRECEDENCE**

- 4.1.0** The Agreement consists of:
- 4.1.1** The body of this Agreement (that portion preceding the signatures of the Parties in execution) and any amendments thereto;
  - 4.1.2** Appendix A - Standard Clauses for all New York State Contracts;
  - 4.1.3** Appendix B - Standard Clauses for All Department Contracts;
  - 4.1.4** Appendix C - Third Party Connection and Data Sharing Agreement;
  - 4.1.5** Appendix D - Participation by Minority Group Members and Women with Respect to State Contracts: Requirements and Procedures; Appendix D-1: Minority and Women-Owned Business Enterprises – Equal Employment Opportunity Policy Statement; and Appendix D-2: MWBE Utilization Reporting Responsibilities under Article 15-A; and
  - 4.1.6** The following Exhibits attached and incorporated by reference to the body of the Agreement:
    - 4.1.6a** Exhibit A: The MacBride Act Statement and the Non-Collusive Bidding Certification;
    - 4.1.6b** Exhibit B: 2016 HMO Specifications dated April 23, 2015; and Exhibit B-1 – Official Department Response to Questions Raised Concerning the 2016 HMO Specifications, dated May 21, 2015; and
    - 4.1.6c** Exhibit C: Contractor's Proposal dated June 4, 2015; Exhibit C-1: Written responses to clarifying questions regarding Contractor's Proposal.

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

**4.1.7a** First, Appendix A - Standard Clauses for All New York State Contracts;

**4.1.7b** Second, Appendix B - Standard Clauses for All Department Contracts;

**4.1.7c** Third, Appendix C - Third Party Connection and Data Sharing Agreement;

**4.1.7d** Fourth, Appendix D - Participation by Minority Group Members and Women with Respect to State Contracts: Requirements and Procedures; Appendix D-1: Minority and Women-Owned Business Enterprises – Equal Employment Opportunity Policy Statement; and Appendix D-2: MWBE Utilization Reporting Responsibilities under Article 15-A;

**4.1.7e** Fifth, any Amendments to the body of this Agreement;

**4.1.7f** Sixth, the body of this Agreement;

**4.1.7g** Seventh, Exhibit A the MacBride Act Statement and the Non-Collusive Bidding Certification;

**4.1.7h** Eighth, Exhibit B – the 2016 HMO Specifications dated April 23, 2015; and Exhibit B-1 – the official Department response to questions raised concerning the 2016 HMO Specifications, dated May 21, 2015; and

**4.1.7i** Ninth, Exhibit C – the Contractor’s Proposal; and, Exhibit C-1 – Written responses to clarifying questions regarding Contractor’s Proposal.

**4.2.0** The terms, provisions, representations and warranties contained in the Agreement shall survive performance hereunder.

#### **ARTICLE V: LEGAL AUTHORITY TO PERFORM**

**5.1.0** The Contractor shall maintain appropriate corporate and/or legal authority, which shall include but is not limited to the maintenance of an administrative organization capable of delivering the Program Services in accordance with the Agreement and the authority to do business in the State of New York or any other governmental jurisdiction in which the Program Services are to be delivered.

**5.2.0** Contractor agrees that it shall perform its obligations under this Agreement in accordance with all applicable federal and NYS laws, rules and regulations, policies and/or guidelines now or hereafter in effect.

**5.3.0** The Contractor shall provide the Department with immediate notice in writing of the initiation of any legal action or suit which relates in any way to the Agreement, or which may affect the performance of Contractor's duties under the Agreement.

#### **ARTICLE VI: PROGRAM SERVICES**

**6.1.0** The Contractor shall submit for the JLMC's review and approval a Plan in accordance with the Specifications (Exhibit B) and the Contractor's Proposal (Exhibit C). No aspect of Contractor's performance of Program Services under the Plan in accordance with the terms and conditions of the Agreement and the Specifications, shall be contingent upon State personnel or the availability of State resources with the exception of all proposed actions of the Contractor specifically identified in the Agreement as requiring Department approval. The Department shall act promptly and in good faith with respect to its approval or disapproval of the Plan.

**6.2.0** **Commercial Plan Benefits:** Any changes in benefits and/or Coverage in years subsequent to the first year of the Agreement shall be presented to the Department and JLMC in response to the Required Annual Submission. The Commercial Plan Benefits must:

**6.2.1** Be fully ACA compliant;

**6.2.2** Specify copayments or coinsurance, as part of the benefit package; however, copayments or coinsurance for inpatient hospital care and annual deductibles are not permitted;

**6.2.3** Comply with all services required by Federal and NYS laws and/or regulations in addition to the following enhanced coverage:

**6.2.3a *Prosthetic Devices:*** Medically necessary prosthetic devices that aid body functioning or replace a limb or body part in order to correct a defect of body form or function must be covered. Examples of prosthetic devices include but are not limited to: artificial limbs, pacemakers, heart valve replacements, artificial joints, external breast prostheses and ostomy supplies. Replacements, repairs and

maintenance not provided for under a manufacturer's warranty or purchase agreement must be covered when functionally necessary;

**6.2.3b *Durable Medical Equipment:*** Medically necessary Durable Medical Equipment (DME) that can withstand repeated use and is primarily used to serve a medical purpose must be covered. Examples of DME include but are not limited to: wheelchairs, walkers, respiratory equipment, and oxygen supplies. Replacements, repairs and maintenance, not provided for under a manufacturer's warranty or purchase agreement must be covered when functionally necessary;

**6.2.3c *Orthotic Devices:*** Medically Necessary custom-made orthotic devices used to support, align, prevent or correct deformities or to improve the function of the foot must be covered. Orthopedic shoes and other supportive devices for treatment of weak, strained, flat, unstable or unbalanced feet should not be included for coverage. Replacements, repairs and maintenance not provided for under a manufacturer's warranty or purchase agreement must be covered when functionally necessary;

**6.2.3d *Prescription Drugs:*** Medically necessary federal legend and state restricted drugs, compounded medications and injectable and self-injectable medications, contraceptive drugs and devices, fertility drugs and enteral formulas must be covered. (The copayment for self-injectable drugs, including fertility drugs, must be the same as the copayment for other covered drugs, except drugs limited to 30-day supply at dispensing.) No annual or lifetime maximum permitted; and

**6.2.3e *Gender Identity Disorder Services:*** Diagnosis and treatment of Gender Dysphoria must be covered.

**6.2.4** Benefits for services not listed as minimum benefit requirements pursuant to this Section 6.2.0, such as routine/preventive dental services and/or the provision of eyeglasses for routine vision correction may be included in the Contractor's standard package. However, riders that include an additional charge for such benefits will not be accepted. Exclusions and other limiting language are subject to modification by the Department in consultation with the JLMC.

**6.3.0 Use of Standard Contracts and Riders:** Contractors may propose to meet the minimum benefit requirements set forth in these Specifications through the use of a standard contract, or through a combination of a standard contract and riders.

**6.3.1** A rider shall be accepted by the Department in consultation with the JLMC only if such rider is necessary to bring the standard Plan proposed by the Contractor into conformity with the minimum benefit requirements. It is not the intent of the Department to purchase from Contractors riders that increase the Plan benefit package to a level above the minimum requirements set forth in the Specifications. Riders that provide benefits not required by the minimum benefit requirements, or that provide benefits in excess of the minimum benefit requirements, may be rejected by the Department in consultation with the JLMC.

**6.4.0 Medicare Advantage Plan Benefit Requirements (If Offered):** Contractor must comply with CMS guidelines and, in addition, the benefit levels provided, must meet or exceed the minimum benefits as set forth in Section 6.2.0 above. Other benefits above the minimum benefits must be comparable to those provided to non-Medicare primary Enrollees. Instances where Federal Law and/or regulation preclude a Contractor from complying with this requirement must be clearly identified in the Contractor's Proposal.

**6.4.1** Contractor's MA Plan must be CMS approved for all counties in the proposed Service Area.

**6.4.2** The Contractor may submit only one Plan for Medicare primary Enrollees, either the Commercial Plan which coordinates with Medicare and includes prescription drug coverage equal to, or better than, Medicare Part D or a Medicare Advantage with Prescription Drug Plan.

**6.4.3** The Contractor must provide Medicare Part D coverage in the coverage gap at a level equal to the Commercial Plan.

**6.4.4** If the Contractor's Medicare ranking falls below 3 stars and has its enrollment frozen by CMS, the Contractor must keep an Enrollee that otherwise would have aged-into the Medicare Advantage Plan in the Commercial Plan until CMS lifts the enrollment freeze.

**6.5.0 Service Accessibility:**

**6.5.1** The Contractor is required to include in its network various State-run facilities located throughout New York State, (e.g., Roswell Park Cancer Institute, and

Helen Hayes Hospital) if such hospitals are within the Contractor's proposed Service Area.

**6.5.2** Twenty-four (24) Hour Coverage: Consistent with New York State laws and/or regulations, the Contractor must provide coverage to members, either directly or through their Primary Care Physician (PCP), twenty-four (24) hours a day, seven days a week. Contractors also must instruct their members on what to do to obtain services after regular business hours.

**6.5.3** Days to Appointment: Contractor must contract with providers who agree to abide with the following appointment standards:

**6.5.3a** Emergency medical or mental health and substance abuse problems, immediately;

**6.5.3b** Urgent medical or mental health and substance abuse problems, within 24 hours of request;

**6.5.3c** Non-urgent "sick visits," within 48 to 72 hours, as clinically indicated;

**6.5.3d** In-Plan, non-urgent mental health and substance abuse visits, within two (2) weeks;

**6.5.3e** Adult baseline and routine physicals and non-urgent or preventive care visits, within twelve (12) weeks;

**6.5.3f** Initial prenatal visits, within three (3) weeks during the first trimester and two (2) weeks thereafter; and

**6.5.3g** Initial visit for newborns to their PCP, within two (2) weeks of hospital discharge.

**6.6.0 Communication Material Requirements:**

**6.6.1** All Enrollee material as well as all communications material must be sent to all members of the JLMC and approved by the Department prior to distribution to State Enrollees. This includes both annual benefit plan communications and updated communications distributed by the Contractor throughout the year.

**6.6.1a** All communication material must present a clear, factually correct, complete and easily understood description of the benefits available

through the Contractor. Any incorrect or incomplete communications sent by the Contractor to NYSHIP Enrollees related to required communication materials as set forth in Article XV of the Agreement must be corrected and re-sent at the Contractor's expense. Benefits offered and/or received prior to this correction must be covered until Enrollees receive the correction notification or, at the discretion of the Department in consultation with the JLMC, for the balance of the Plan Year.

- 6.6.1b** Communication materials may promote the Contractor but must not make general or specific comparisons to any other NYSHIP option. The Contractor will not be permitted to make reference to the Empire Plan or Plan specific comparisons to other NYSHIP HMOs. For example, a Contractor may not state that they "serve more NYSHIP members than any other HMO that participates in NYSHIP."
- 6.6.1c** Communication activities may not discriminate on the basis of a potential member's health status, prior use of health service, or need for future health services.
- 6.6.1d** The Contractor may not engage in communication practices or distribute communication materials that mislead or confuse NYSHIP enrollees by promoting benefits for which the NYSHIP Enrollee is not covered.
- 6.6.1e** The premium cost of all NYSHIP health plan options will be communicated to Enrollees by the Employee Benefits Division, Department of Civil Service, and shall not be included in any communication materials distributed by any Contractor, with the exception of rate filing notifications required by the NYS Department of Financial Services.
- 6.6.1f** Visual presentations of Enrollees in the Contractor communication material must be representative of the diversity within the New York State enrollment.

- 6.6.2** The Contractor is required to timely submit drafts of the Cover Letter, federally mandated Summary of Benefits and Coverage (SBC), Schedule of Benefits, and

Side-by-Side Comparison of Benefit Changes in both hard copies and PDF with their Required Annual Submission. The Department may amend the mailing date(s) of communication materials for Retiree groups should it be necessary to coordinate these mailing(s) with Department communications.

- 6.6.2a** The required communication material, after approval by the Department and JLMC, will require that the Cover Letter, Schedule of Benefits, and the applicable Side-by-Side Comparison of Benefit Changes be transmitted to Enrollees in one mailing. Final versions of these mailings must be sent to all JLMC Contact Members one (1) week prior to distribution to Enrollees.
- 6.6.2b** The Contractor may, however, direct NYSHIP Enrollees to rate information provided by the Department. Rate information is provided on the Department's web site at [www.cs.ny.gov](http://www.cs.ny.gov).
- 6.6.2c** **Cover letters:** The Communications Materials mailing to Contractor members must be submitted as part of the Contractor's Required Annual Submission. The Contractor must include the following statement in the Cover Letter, "Your Eligibility Guidelines may be different from those guidelines listed in the contract. Please refer to your NYSHIP General Information Book for these guidelines or visit the New York State Department of Civil Service's web site at [www.cs.ny.gov](http://www.cs.ny.gov)."
- 6.6.2d** **Summary of Benefits and Coverage (SBC) :** The Contractor must comply with ACA to produce, revise, distribute and translate, upon request, an SBC that accurately describes the NYSHIP group benefits and coverage. The SBC must be provided to the Department in an electronic format as a PDF document no later than 30 days before the beginning of each Plan Year for posting to the Department's website. The Contractor must distribute a SBC to any eligible Employee or Retiree contacting the Contractor or the Department to request a copy in accordance with ACA requirements for timely distribution. Annually, at Plan renewal or upon material modification of the SBC, the Contractor must provide notice to all current Enrollees via a postcard, plan materials, or other Federally-compliant means of notification of how to view or obtain a copy of the SBC from the Contractor.



**6.6.2e *Schedule of Benefits:*** The Contractor's Schedule of Benefits must include, but not be limited to, applicable copayments and/or coinsurance levels. The Schedule of Benefits must also include a comprehensive description of limitations and exclusions. A separate Schedule of Benefits is required for the Commercial HMO Plan and the Medicare Advantage Plan, if offered by the Contractor.

**6.6.2f *Side by Side Comparison on Benefits:*** The Contractor is required to submit a Side by Side Comparison of Benefits that lists changes in the benefits offered to Enrollees from the previous year to the current year, if it participated in NYSHIP in the previous year. Such changes include, but are not limited to: copayments; new benefits; number of days of a prescription drug supply; delivery of services; and provider networks. In the event there are no changes in the benefits offered, the Contractor will be required to mail to members an affirmative statement that states that there are no changes in either the benefits offered or delivery of services from the previous year. The Side by Side Comparison of Benefits must be provided to the Department in an electronic format as a PDF document no later than 30 days before the beginning of each Plan Year for posting to the Department's website.

**6.6.3 *Choices Guide:*** To assist NYSHIP Enrollees in choosing a health insurance plan during the annual Option Transfer Period, the Department will develop the Choices Guide. This Guide contains uniformly formatted pages for each Plan offering (Commercial and Medicare Advantage, if offered) so that Enrollees may easily compare the benefits offered.

**6.6.4 *Optional Marketing Materials and Activities:*** If the Contractor chooses to distribute optional marketing materials and/or participate in optional activities, it must:

**6.6.4a** Develop and distribute generic marketing materials to NYSHIP Enrollees who live or work in the Contractor's approved NYSHIP Service Area, that are consistent with NYSHIP benefits. The Department will not provide any information to the Contractor regarding the identification of eligible NYSHIP Enrollees or their mailing addresses. Any optional marketing materials mailed by the Contractor,

including provider directories and newsletters, must be submitted in advance to all JLMC Contact Members;

- 6.6.4b Not provide potential NYSHIP members with giveaways as an inducement to enroll in the HMO;
- 6.6.4c Not permitted to conduct marketing activities at State work sites without prior approval of the Department. Requests for such activities must be submitted to the Department, Attention: Employee Benefits Division, Communications Unit, in writing with a copy to the Governor's Office of Employee Relations, Attention: Employee Benefits Management Unit. Marketing activities include, but are not limited to, participation in health fairs and information booths. The Contractor may only distribute materials that provide specific information regarding the HMO or relate to general health care issues at such approved work site presentations. Items that do not meet these criteria and have no more than a nominal value may be distributed to NYSHIP Enrollees attending conferences and/or meetings that are not held at the work site; and
- 6.6.4d Not state how much premiums will decrease or how much savings may be realized, as a result of the Contractor's benefit changes that are expected to reduce premium costs. A notation may be included in the Contractor's Optional Marketing Materials that certain benefit changes are expected to result in decreased premiums or to help limit premium increases.

## 6.7.0 Reporting

### 6.7.1 *Complaint/Grievance/External Appeals*

- 6.7.1a **Complaints:** The Contractor must maintain records of all complaints that have been unresolved for more than forty-five days (45) days. Such records shall include the actual complaint, all correspondence related to the complaint, and an explanation of the disposition of the complaint. The Contractor must make these records available to the JLMC Contact Members upon request. All Enrollee identifying information must be redacted.

- 6.7.1b Grievances:** The Contractor must maintain a report summarizing the number of grievances filed for the most recent Plan Year, sorted by procedure type. The report must include the total number of grievances, the number of grievances upheld, overturned, modified or withdrawn. The Contractor must make these records available to the JLMC Contract Members upon request.
- 6.7.1c External Appeals:** The Contractor must maintain a report summarizing the number of external appeals filed for the most recent Plan Year, sorted by procedure type. The report must include the total number of external appeals, the number of appeals upheld, overturned, modified or withdrawn. The Contractor must make these records available to the JLMC Contract Members upon request.
- 6.7.1d** The Department reserves the right to seek information immediately from the Contractor pursuant to investigation of a particular member or provider complaint.
- 6.7.2. Member Satisfaction Surveys:** The Contractor must provide a copy of any member satisfaction survey that includes NYSHIP Enrollees and survey results electronically in searchable format within 30 days upon request from any JLMC Contact Member.
- 6.7.3. Medicare Advantage Plan Enrollments/Disenrollments:** The Contractor must notify the Department on a monthly basis of any members who are no longer eligible to be enrolled in the Medicare Advantage Plan for reasons identified by the Contractor or CMS, including but not limited to: missing HICN; and no Medicare Parts A and/or B. The Department must also be notified if an Enrollee moved out of the Contractor's Service Area or is deceased.
- 6.7.4. Federal Medical Loss Ratio (MLR):** The Contractor must file its Medical Loss Ratio (MLR) with the federal government by July 31 each year for the prior Calendar Year. In those instances where the Contractor fails to meet the required MLR threshold for community rated large group contracts during the preceding Calendar Year, rebates must be paid to NYSHIP by September 30 of the current calendar year. In addition, notification must be provided to both Enrollees and the employer group in instances where the MLR threshold has not been met, in accordance with ACA regulations.

**6.7.5. Low Income Premium Subsidy (LIPS):** The Contactor must submit an LIPS report to the Department no later than fifteen (15) Business Days from the date the Contractor receives the subsidy payment from CMS. The report must include the following information regarding payments made by the Contractor to LIPS Enrollees: 1) Payment Date; 2) Carrier ID; 3) Benefit Plan; 4) Benefit Program; 5) Last Name; 6) First Name; 7) DOB; 8) HICN; 9) Member ID; 10) SSN; 11) # of Payments; 12) Payment Start Date; 13) Payment End Date; 14) ADJ Reason Code; 15) ADJ Reason Code Description; and 16) LIPS Amount.

**6.7.6. Healthcare Effectiveness Data and Information Set (HEDIS) Reports:** Consistent with State and Federal regulations, The Contractor must complete HEDIS reports on a timely basis.

**6.8.0 Submission of Premium Rates:** In order to prepare for the annual health insurance Option Transfer Period, NYSHIP premium rate submissions are due to the Department by September 1 of each Calendar Year. The premium rates shall be accompanied by the Contractor's most recent available year-to-date loss ratio for the community pool in which NYSHIP Enrollees are included. The premiums submitted to the Department shall be guaranteed rates under the NYS Department of Financial Services (DFS) regulation 11 NYCRR 52.42(b). The premium rates guaranteed shall be the presently prevailing DFS approved or filed and pending DFS approval premiums or the Contractor's best estimate of the expected filed or approved premium rates for the following year adjusted by any prospective or retrospective adjustments required for guaranteed premium rates under 11 NYCRR 52.42(b). The premium rates for those Enrollees who reside out of state must be the same as NYS premium rates filed with the DFS. Upon request, the Contractor shall provide detailed information to support the quoted premium rates:

**6.8.1 NYS DFS Rates Filed and Approved:** The Contractor must provide a complete copy of the DFS's "Prior Approval Rate Change" application along with the printout of the SERFF disposition notice indicating DFS approval of the rates submitted must be submitted to the Department by September 1 of each Calendar Year.

**6.8.2. Rates Filed and Pending NYS DFS Acknowledgment:** If the Contractor has a rate request pending DFS's approval with an effective date no later than January 1, the Contractor must submit a complete copy of the DFS "Prior Approval Rate Change" application and the SERFF application notice indicating submission of the application by September 1 of each Calendar Year. The receipt confirmation from the DFS must be sent to the Department by February 1 of each year.

**6.8.3. Rates Not Yet Submitted for NYS DFS Approval:** If the Contractor intends to submit a rate increase or decrease to the DFS but has not made the submission by the NYSHIP Rate Submission Deadline, the Contractor must provide a letter from the Contractor's Chief Executive Officer, by September 1 of each Calendar Year, which states that the Contractor has not yet submitted a request for a rate increase/decrease to the DFS but intends to file a "Prior Approval Rate Change" application for a rate increase/decrease to be effective on or before January 1 and that the rates submitted to NYSHIP are the best estimate of the rates which will be submitted to the DFS. A complete copy of the SERFF application notice indicating submission of the "Prior Approval Rate Change" application and the receipt confirmation from the DFS must be submitted to the Department by February 1 of each Calendar Year. If the Contractor has not provided rates by September 1 of each Calendar Year it may be excluded by the Department; in consultation with the JLMC as a NYSHIP health plan option for the period covered by these Specifications.

**6.8.4 Premium Rate Billing:** NYSHIP rates are comprised of (1) the Contractor's Community Rates associated with the JLMC approved benefits for the following Plan Year, as submitted to and approved by the DFS, (2) Medicare Rate Adjustments (if applicable); and (3) Prior Period Adjustments:

**6.8.4a Community Rates:** The basis for NYSHIP rates are the Contractor's Community Rates (basic contract rates and required benefit rider rates) for Plan Year for the specific Commercial Plan approved by the Department in consultation with the JLMC which have either been approved or are pending approval by DFS.

**6.8.4b Medicare Rate Adjustments:** NYSHIP's rate structure and billing system do not differentiate between Medicare and non-Medicare contracts. Regardless of Medicare status, Enrollees/Employers are billed and the Contractor will be paid the same rates. In accordance with CMS guidelines, the Contractor is required to submit Medicare Rates to CMS for each Medicare Plan. The premium rates for the Medicare Plan approved by the JLMC will vary from the Commercial Plan rates; they are typically less than those for the Commercial Plan. The variances between the Commercial Plan rates and the Medicare Rates are

recognized in the NYSHIP rate development calculation by means of adjustments to the Community Rates.

**6.8.4c** *Prior Period Adjustments:* The Contractor's NYSHIP premium rate submission may include Community Rates that are pending approval by DFS. The rates eventually approved by DFS may be greater than or less than the Community Rates submitted to the Department and implemented for the Plan Year, resulting in insufficient or excess premiums paid to the Contractor, respectively. As such, the NYSHIP premium rate calculations incorporate prior period adjustment calculations to recognize those differences between the submitted rates and the final approved DFS rates. The prior period adjustment calculations represent the differences in the initial and final rates multiplied by actual current year enrollment (as provided by the Department, taken from NYBEAS) and are applied as adjustment to the Community Rates.

**6.8.4d** The Contractor may submit for a rate adjustment to DFS with an effective date of January 1. Such rate adjustment is only applicable until another rate request is made and approved by DFS. For administrative purposes, the Contractor may guarantee the payment of the implemented rate for one year and incorporate any approved mid-year rate changes into the prior period adjustment of the following year's guaranteed rate.

**6.8.4e** For a Contractor that has withdrawn from NYSHIP, within the first six months following its withdrawal, a prior period calculation will be required for each of the Contractor's administered NYSHIP options. Unlike the active HMO options in which prior period adjustments are applied to a future rate period, an aggregate overpayment/underpayment is calculated for the withdrawn Contractor. An aggregate credit, or negative, dollar amount would represent an overpayment of prior year premium by DCS to the Contractor. An aggregate debit, or positive, dollar amount would represent an underpayment or prior year premium by the Department to the Contractor. The prior period adjustment calculation is subject to review and approval by the Department. Upon written approval of the prior

period adjustment calculation by the Department, any amount due, whether to the Department or the Contractor, shall be paid within thirty days of written approval.

## **6.9.0 Administrative Requirements**

**6.9.1 *Account Management Team:*** The Contractor must have an Account Management Team with a proactive, experienced account leader and team in place who have the authority and expertise to coordinate the appropriate resources to:

**6.9.1a** Ensure that there is a process in place to gain immediate access to appropriate corporate resources and senior management necessary to meet all Contractor Program requirements and to address any issues that may arise during the performance of the Agreement;

**6.9.1b** Ensure the Account Management Team is accessible and sufficiently staffed to provide timely responses (within 1 to 2 Business Days) to concerns and inquiries posed by the Department, or other staff on behalf of the JLMC regarding member-specific claims issues for the duration of the Agreement to the satisfaction of the Department; and

**6.9.1c** Immediately notify the Department, in writing, of actual or anticipated events impacting the Program requirements and/or delivery of services to Enrollees such as but not limited to: change from not-for-profit status to for-profit status;, applications by another party to acquire control of the Contractor; legislation; class action settlements; and operational issues.

**6.9.2 *Alternate Identification Number:*** The Contractor must use an identification number other than Social Security Number on identification cards and other documents, forms or correspondence provided to users external to the Contractor for its members enrolled through NYSHIP.

**6.9.3 *Hospital and Provider Group Changes:*** The Contractor must advise all JLMC Contact Members of the potential withdrawal of any hospital or hospital group and of any significant provider group from the Contractor's provider network as soon as the potential withdrawal is identified, but no later than thirty (30) days prior to the group's potential withdrawal date.

- 6.9.4 NYSHIP Standing within HMO Customer Base:** For the initial year of this contract term, the Contractor is required to list its current ten largest employer groups, in descending order, by number of contracts for the organization's HMO business (i.e., large group HMO product) in which NYSHIP is included and indicate where NYSHIP enrollment would rank in the standings. Thereafter, the Contractor must advise the Department and JLMC Contact Members of any change to NYSHIP's position in the standings as part of the Annual Required Submission.
- 6.9.5 Key Subcontractor Changes:** The Contractor must provide all JLMC Contact Members with notification of changes in Key Subcontractors within thirty (30) days of such changes becoming final.
- 6.9.6 Region Configuration Changes:** The Contractor must notify the Department, in writing, in advance of all proposed changes in the configuration of Service Area counties, including a shift in counties within rating regions or the establishment of a new rating region(s). This notification must be made to the Department at the time the request is submitted to the regulatory agency and noted as pending. The Contractor must notify the Department of the determination by the regulatory agency, and upon approval, be provided all pertinent information including, but not limited to the effective date of the change. The Contractor must also provide the Department and all JLMC Contact Members with copies of all notification materials for members impacted by the reconfiguration of Service Area prior to distribution to the members.
- 6.9.7 Website Access:** The Contractor must provide the Department and JLMC Contact Members responsible for administrative oversight of NYSHIP HMOs with access to website applications that are available only to members. The Contractor must also provide the URL of the main website and provide a dummy ID and password so that the Department may view the capabilities and user friendliness of the Contractor's website.
- 6.9.8 Enrollment Data Transmission Requirement:** The Contractor must use the enrollment data transmission protocol and encryption method stipulated by the Department. The current data transmission protocol must be Secure FTP, and the current encryption methodology must be PGP, or as otherwise specified by the Department. Secure FTP must be compatible with the OpenSSH implementation of Secure FTP. Further, the Contractor must agree to execute



the Department's Third Party Connection Agreement and Third Party User Agreement and any amendments, as required, as well as any other agreement or protocol required by the Department to ensure the security of its data transmissions.

**6.9.9 Dependent Social Security Numbers:** The Contractor must obtain missing dependent Social Security numbers from non-Medicare Enrollees in order to comply with the Employer Shared Responsibility requirements of the Patient Protection and Affordable Care Act. However, the Contractor must first reconcile its enrollment files with the enrollment files issued by the Department on a monthly basis to ensure that no Enrollees are unnecessarily solicited. In addition, the Department should be made aware of any Social Security numbers that are obtained by the Contractor that are not on the Department's enrollment file.

**6.9.10 Release of Protected Health Information Requirement:** The Contractor must accept a signed and valid NYSHIP Authorization for Release of Protected Health Information form, or any alternative form developed during the term of the Agreement, for the purpose of the release of protected health information to NYSHIP representatives.

**6.9.11 Medicare Secondary Payer Claim Administration (Applies only to Commercial Plan):** The Contractor must agree to follow the procedures set forth below in handling Medicare Secondary Payer (MSP) claims for any NYSHIP Enrollees and Dependents:

**6.9.11a** Upon receipt of a demand letter directly from the Centers of Medicaid and Medicare Services (CMS) or indirectly from the Department, for the payment of a claim that was paid primary by Medicare and for which CMS asserts NYSHIP coverage should have been primary, the Contractor shall make its best effort to resolve the claim within the timeframe specified by CMS. This shall include working with the Department to determine the claimant's employment status at the time the claim was incurred, the amount of liability for such claim on the part of the Contractor and the payment of any liability owed by the Contractor to CMS;

**6.9.11b** In the event an MSP claim is not settled with CMS within the timeframe specified in the demand letter, the Department reserves the right to have CMS reimbursed the full amount of the claim by another NYSHIP plan administrator for the purpose of avoiding any interest charges and/or the offset of other Federal funds payable to the State. The Contractor agrees that if it is determined that there was liability for payment of all or part of such claim including accrued interest, the Contractor shall, upon the direction of the Department, repay to the NYSHIP Plan administrator amounts paid on behalf of the Contractor for MSP claims reimbursed by the NYSHIP Plan administrator;

**6.9.11c** The Contractor agrees to periodically report to the Department the status of any unresolved MSP claims, including both claims received directly from CMS or indirectly received from the Department. The timing and information to be included in such reports shall be specified by the Department. In addition, the Contractor shall provide to the Department copies of any correspondence it sends to CMS regarding NYSHIP MSP claims; and

**6.9.11d** In the event there is an offset of Federal funds payable to a New York State agency by the U.S. Treasury because of an unresolved MSP claim attributable to the Contractor, the Department shall reimburse such agency for the offset using monies from the Health Insurance Fund and shall reduce the next premium payment to the Contractor by the amount of such offset.

**6.10.0 Coordination with Medicare:** The Contractor must comply with any and all requests from the Department for assistance and such other support as the Department may require to ensure a correct and adequate interface between NYSHIP and the Centers for Medicare and Medicaid Services (CMS). Such services shall include at least the following tasks and such other tasks as may be added in guidance and further regulation by CMS:

**6.10.1 Retiree Drug Subsidy:** If the Contractor does not administer an approved Medicare Advantage Plan for NYSHIP, the Contractor shall disclose to CMS, on behalf of the Department, any information received from the Department or within the Contractor's control, necessary for the Department to comply with requirements of the Retiree Drug Subsidy (RDS). This includes providing and maintaining the accounting and enrollment records, as well as reporting

documentation in the format and layout required by the Department, necessary to enable the Department to collect and verify the Retiree Drug Subsidy from CMS. The format and layout will be provided to the Contractor and may be revised at the discretion of the Department. If revised, the Department shall provide revised layout documentation to the Contractor. Required RDS tasks shall include, but not be limited to:

**6.10.1a** Timely submission by the Contractor to the Department all records and reports in a manner, form, and timeliness acceptable to the Department as required support of the Contractor's semi-annually submission of data to CMS in order to permit the Department's receipt of Retiree Drug Subsidy payments on a semi-annually basis. Semi-annually data submission must be received by the Department no later than 45 days following the end of each semi-annual period;

**6.10.1b** Timely submission by the Contractor to the Department of all records and reports in a manner and form acceptable to the Department as required support to complete the annual reconciliation process. Such records must be in compliance with CMS and Department requirements, including but are not limited to:

**6.10.1b(1)** Tracking of final paid claims;

**6.10.1b(2)** Submitting to the Department all components of the annual RDS Reconciliation Reporting (Detail and Summary Payment files, Detail and Summary Payment file, Record Counts and Cost Report), meeting the Departments' specifications for completeness and accuracy, no later than February 1 of the calendar year in which the Reconciliation is required to be filed with CMS; and;

**6.10.1b(3)** Agreeing to performance standards for RDS except for those occurrences where a delay is due to a CMS regulation or requirement change impacting file production, as follows: required Reconciliation reporting by the specified due date,

**6.10.1b(3)i** The Contractor shall remit to the Department \$1,000 for each day beyond the due date that the

required complete and accurate RDS files are not provided to the Department; and

**6.10.1b(3)ii** The Contractor shall indemnify the Department, in total, for any and all losses incurred, should the Contractor's failure to provide acceptable files and timely cost reporting to CMS result in any loss of Retiree Drug Subsidy reimbursement to the Department.

**6.10.1c** Reporting the annual RDS Reconciliation to the CMS/Retiree Drug Subsidy website, once approved, in writing, by the Department;

**6.10.1d** Assisting the Department to complete the annual attestation of actuarial equivalence for the 2016 Plan Year and subsequent Plan Years. If applicable, the Contractor must also cooperate with the Department to disclose to CMS and to NYSHIP's Part D-eligible Enrollees if the Department is unable to attest to the requisite actuarial equivalence;

**6.10.1e** Establishing and implementing proper safeguards against the unauthorized use and disclosure of the data exchanged pursuant to the administration of the NYSHIP Retiree Drug Subsidy as well as other aspects of the interface between NYSHIP and CMS. Such safeguards shall include the adoption of policies and procedures to ensure that the data obtained as a consequence of the NYSHIP Retiree Drug Subsidy application shall be used solely in accordance with applicable federal and State law. The Contractor shall establish appropriate administrative, technical, procedural, and physical safeguards to protect the confidentiality of the data and to prevent unauthorized access to the data. The safeguards shall provide a level of security at least comparable to the level of security required of the Department by CMS, as specified by CMS. Any and all Contractor Personnel interacting with this data must be advised by the Contractor of the confidential nature of the information, the safeguards required to protect the information, and the administrative, civil and criminal penalties for noncompliance contained in applicable federal and State law;

**6.10.1f** Acknowledging that the information furnished in connection with the administration of the NYSHIP Retiree Drug Subsidy is being provided to obtain federal funds. The Contractor shall require all sub-contractors, including any plan administrators, if applicable, that submit information required by CMS to obtain the Retiree Drug Subsidy on behalf of NYSHIP to acknowledge that information provided in connection with the subcontract is used for the purpose of obtaining federal funds; and

**6.10.1g** Acknowledging that its provision of services pursuant to this section of this Agreement is subject to audit and evaluation by the Department of Health and Human Services pursuant to 42 CFR Subpart R or other authority as may be cited by the federal government, as well as by the State of New York pursuant to Appendix A and Appendix B of this Agreement. The Contractor shall comply with any record retention requirements required pursuant to 42 CFR SubPart R in this regard.

**6.10.2** The Department acknowledges and agrees that it shall be solely responsible for: (1) providing Creditable Coverage notices required with respect to Retiree Drug Subsidy; and (2) determining whether enrolled individuals are qualifying covered Retirees. The Department shall provide to the Contractor a CMS-verified list of qualifying covered Retirees, as will be updated from time to time;

**6.10.3 *Medicare Advantage Plan:*** A Contractor that offers a Medicare Advantage Plan through NYSHIP shall follow the procedures set forth below:

**6.10.3a** The MA Plan must follow the regulations and requirements set forth in the CMS Medicare Managed Care Manual (MMCM) as amended. The Department is obligated to follow the rules and regulations in the MMCM as applicable to the employer group.

**6.10.3b** The Contractor shall agree to follow the procedures set forth in Chapter 2 of the MMCM, Additional Enrollment Request Mechanisms for Employer/Union Sponsored Coverage, which allows an Employer to group enroll its Retirees using a group enrollment process that does not require submission of a signed application by the Retiree. The Contractor must agree to work in cooperation with the Department to enroll individuals into the Contractor's Medicare Advantage Plan as each becomes Medicare eligible in accordance with the MMCM

process. The Department will follow the process required of the employer group for providing information to each eligible Employee/ Retiree in the timeframes defined in the MMCM, as follows:

**6.10.3b(1)** The Department shall provide advance notice to eligible Enrollees and/or their eligible Dependents that Department intends to enroll them in MA Plan;

**6.10.3b(2)** The Department shall provide eligible Enrollees and/or their eligible Dependents notice that they may affirmatively opt-out of such enrollment; explain the process to opt-out; and explain any consequences to such action;

**6.10.3b(3)** The Department shall provide eligible Enrollees and/or their eligible Dependents a summary of benefits offered under the MAPD, an explanation of how to get more information about the MAPD, and an explanation on how to contact Medicare for information on other Medicare health plan options that might be available; and

**6.10.3b(4)** The Department shall provide eligible Enrollees and/or their eligible Dependents the information contained in the MMCM Chapter 2, Exhibit 2: Model Employer/Union Group Health Plan Enrollment Request Form, under the heading "Please Read & Sign Below."

**6.10.3c** The Department shall include in the enrollment files submitted to the Contractor all the information required for the Contractor to submit an enrollment request to CMS, as set forth in the MMCM. The Contractor must advise the Department in writing of any changes to the required enrollment data at least 60 days prior to implementation. If the Contractor receives notification of change from CMS less than 60 days in advance of implementation, the Contractor must advise the Department within 2 Business Days from receipt of such notification from CMS.

- 6.10.3d.** The Contractor shall provide health care benefits to MAPD Members who receive covered services under the terms of this Agreement and the EOC. The Contractor shall furnish MAPD identification cards and EOCs to each MAPD Member enrolled for MAPD Plan benefits.
- 6.10.3e** The Contractor shall agree to follow the procedures set forth in Chapter 2 of the MMCM, Optional Employer/Union MA Disenrollment Request Mechanism, which allows MA Plans to accept voluntary disenrollment elections directly from the employer or union without obtaining a MA disenrollment form from each individual and Group Disenrollment for Employer/Union Sponsored Plans, which allows an employer to group disenroll its MAPD Members using a group disenrollment process that does not require submission of a signed disenrollment form. The Contractor must agree to work in cooperation with the Department to disenroll individuals out of the Contractor's Medicare Advantage Plan. The Department shall agree to follow the process and timelines required for group disenrollment as stated in the MMCM including notification of the group's intention to disenroll the MAPD Members and transmit the information required for the Contractor to submit a disenrollment request to CMS. For individual voluntary disenrollment requests, the Department shall agree to submit disenrollment information which accurately reflects the Department's record of the disenrollment made by each MAPD Member according to the processes the Department has in place.
- 6.10.3f** A Contractor that offers a Medicare Advantage Plan through NYSHIP shall agree to notify the Department when CMS regulations impact the enrollment of a NYSHIP Enrollee or Dependent in the Medicare Advantage Plan. These events include but are not limited to the following:
- 6.10.3f(1)** CMS-generated disenrollments that remove a NYSHIP Enrollee or Dependent from the Medicare Advantage employer group plan;
  - 6.10.3f(2)** Disenrollments prompted by MAPD Member correspondence where CMS regulations require the Contractor to act on the MAPD Member's request prior to the

Department's notification through the Optional Employer/Union MA Disenrollment Request Mechanism or Group Disenrollment for Employer/Union Sponsored Plans;

**6.10.3f(3)** Enrollments received from the Department through the Group Enrollment for Employer/Union Sponsored Plans that cannot be processed with CMS. These situations include but are not limited to cases where the NYSHIP Enrollee or Dependent is not enrolled in Medicare Part A or Part B, already enrolled in another Medicare Advantage Plan, has an invalid or missing HICN or does not reside in Service Area; and

**6.10.3f(4)** Other situations not described above.

**6.10.3g** The Contractor shall agree that the commencement of coverage for Enrollees and their eligible Dependents will begin as of the requested effective date, in accordance with CMS regulations, for any eligible NYSHIP individual who makes a timely application for enrollment.

**6.10.3h** The Department shall report to the Contractor termination of coverage for a MAPD Member who is determined by the Department to be ineligible for benefits in the enrollment files transmitted on the scheduled basis as pursuant to Section 6.10.0 above. Upon the Department's notification to the Contractor, the coverage of such MAPD Member shall terminate after providing notice to such MAPD Member in accordance with the Department's policy and CMS regulations. The Department is responsible for providing NYSHIP required notice; the Contractor is responsible for providing CMS required notice. Retroactive disenrollment shall not be permitted except in specific situations approved by CMS.

**6.10.3i** The Contractor must, within fifteen (15) business days from the date the Contractor receives the Low Income Premium Subsidy (LIPS) payment from CMS, provide the Department with the detailed information set forth below. The Contractor must refund LIPS beneficiaries the Low Income premium subsidy payment within the required period of forty-five (45) days from the date the Contractor receives the monies from CMS. The information set forth below must be reported to the Department on a



monthly basis and must contain information for each beneficiary, including the NYSHIP Enrollee's identification number. The total amount reported in the monthly LIPS data report must equal the LIPS payments. The LIPS data report fields must include:

- 6.10.3i(1)** NYSHIP Enrollee's name
- 6.10.3i(2)** NYSHIP Enrollee's social security number
- 6.10.3i(3)** LIPS eligible individual's name
- 6.10.3i(4)** LIPS eligible individual's social security number
- 6.10.3i(5)** LIPS eligible individual's date of birth
- 6.10.3i(6)** LIPS eligibility start date
- 6.10.3i(7)** LIPS eligibility end date
- 6.10.3i(8)** Monthly subsidy amount received from CMS for the LIPS individual
- 6.10.3i(9)** Dual Eligibility indicator
- 6.10.3i(10)** Date LIPS payment received from CMS (MM/DD/YYYY)

**6.10.3j** The Department acknowledges that a Medicare Part D Late Enrollment Penalty (LEP) may be assessed to a MAPD Member when the Member has a break in Creditable Coverage. To determine the existence of Creditable Coverage, the Contractor shall review the MAPD coverage history by viewing the MAPD NYSHIP enrollment record in the New York Benefits Eligibility & Accounting System (NYBEAS). For those MAPD Members whose NYBEAS record does not confirm continuous Creditable Coverage, the Contractor shall send a Creditable Coverage attestation form to the MAPD Members in accordance with CMS regulations. The Contractor shall bill the MAPD Member directly for any LEP assessed by CMS.

**6.10.4** The Department acknowledges that, as a consequence of the Contractor's agreement with the Centers for Medicare and Medicaid Services (CMS) to operate Medicare Advantage plans, under which the Contractor may offer group Medicare Prescription Drug Plans (MAPD Plans) to employer sponsors, the Contractor is required to obtain a written agreement from each employer sponsor that provides that the employer-sponsor may determine how much of an Enrollee's Medicare Part D monthly beneficiary premium it will subsidize, subject to certain restrictions as set forth below, and that the Contractor is required to

retain this written agreement and provide access CMS with access to it in accordance with 42 CFR §§423.504(d) and 423.505(d) and (e).

**6.10.4a** The Department cannot vary the premium subsidy for individuals within a given class of Enrollees.

**6.10.4b** The Department cannot charge an Enrollee for prescription drug coverage provided under the MAPD Plan more than the sum of his/her monthly beneficiary premium attributable to basic prescription drug coverage plus 100% of the monthly beneficiary premium attributable to his/her non-Medicare Part D benefits (if any). The HMO's MAPD premiums must factor in direct subsidy payments received from CMS.

**6.10.4c** The Contractor shall directly refund to the Enrollee (or Enrollee/participant, if applicable) the full amount of the LIPS payment from CMS. The Contractor is required to complete the refund within forty-five (45) days of the date the Contractor receives from CMS the LIPS payment for the eligible Enrollee.

#### **6.11.0 Disabled Dependent Determinations**

**6.11.1** The Contractor must establish a process to perform reviews of the Department's PS-451 form and all additional medical information submitted to support Dependent disability determinations. The review must be completed by a Clinical Manager in the United States (preferably in New York State) and a clinical determination must be completed within ten (10) Business Days of receipt of a completed form.

**6.11.2** The Contractor must send a determination letter, approved in advance by the Department to the Enrollee and to the Department advising of the determination within three (3) Business Days of determination.

#### **ARTICLE VII: MODIFICATION OF PROGRAM SERVICES**

**7.1.0** In the event that laws or regulations enacted by the Federal government and/or the State have an impact upon the conduct of this Agreement in such a manner that the Department determines that any design elements or requirements of the Agreement must be revised, the Department shall notify the Contractor of any such revisions and shall provide the Contractor with a reasonable time within which to implement such revisions.

- 7.2.0** In the event that NYS and the unions representing State Employees enter into collective bargaining agreements, or the State otherwise requires changes in Plan design elements or requirements of the Agreement, the Department shall notify the Contractor of such changes and shall provide the Contractor with reasonable notice to implement such changes.
- 7.3.0** To the extent that any of the events as set forth in this Article shall take place and constitute a material and substantial change in the delivery of services that are contemplated in accordance with the terms of the Agreement as of the Effective Date and which the Contractor is required to perform or deliver under the Agreement, either Party may submit a written request to initiate review of the premiums(s) received by the Contractor for services provided and guarantees made by the Contractor under the terms of the Agreement, accompanied by appropriate documentation. The Department reserves the right to request, and the Contractor shall agree to provide additional information and documentation the Department deems necessary to verify that a modification of the premiums or guarantees is warranted. The Department will agree to modify the premiums(s) to the extent necessary to compensate the Contractor for documented additional costs determined by Department to be reasonable and necessary. The Contractor will agree to modify the premium(s) to the extent necessary to relieve the Department of the obligation to pay for Program services that are no longer required. The Department will agree to modify guarantees as determined by the Department to be necessary to reflect Program modifications. Should the Parties agree to modify the premium(s) and/or guarantees, such approval shall be subject to written amendment and approval by OSC and the AG. The Contractor shall implement changes as required by the Department with or without final resolution of any premium proposal.

#### **ARTICLE VIII: ELIGIBILITY AND EFFECTIVE DATES OF COVERAGE**

- 8.1.0** Each Employee and/or Dependent shall be eligible for benefits under this Agreement in accordance with the Department's prevailing eligibility criteria, in accordance with the Regulations of the President of the Civil Service Commission.
- 8.2.0** Coverage for Enrollees and enrolled Dependents pursuant to the Contractor's Plan shall take effect in accordance with the Department's prevailing eligibility criteria, in compliance with the Regulations of the President of the Civil Service Commission. These regulations shall be the sole determining factor with respect to effective dates of coverage. On behalf of the President of the Civil Service Commission, the Department shall exercise sole authority to determine the interpretation and application of these regulations.

**8.3.0** The Department shall transmit enrollment information provided by the Enrollee to the Contractor. The Contractor shall use the enrollment data transmission protocol and encryption method required by the Department for that purpose. The current data transmission protocol must be either FTP or Secure FTP, and the current encryption methodology must be PGP or as otherwise specified by the Department. If Secure FTP is used, it must be compatible with the OpenSSH implementation of Secure FTP. Further, the Applicant must agree to execute the Department's Third Party Connection Agreement and Third Party User Agreement and their amendments, as required, and any other agreement or protocol required by the Department to ensure the security of its data transmissions. Enrollments processed in accordance with the Department's procedures for executing such enrollment and the reports generated as a result of these procedures shall be the sole means of determining valid enrollment for Plan benefits.

#### **ARTICLE IX: CERTIFICATES**

**9.1.0** Within 30 days of notification by the Department of an Enrollee's enrollment, the Contractor shall issue to each Enrollee a Certificate, or advise each Enrollee the means to obtain a Certificate, and to each MAPD Enrollee an EOC which shall state the benefits to which each is entitled. Such certificate shall summarize the provisions of this Agreement principally affecting the Enrollee/MAPD member.

**9.2.0** The Certificate and EOC shall provide a clear, easily understood description of the benefits provided by the Contractor and shall include a comprehensive statement of any exclusions or limitations of the benefits.

**9.3.0** Benefits shall be provided by the Contractor in performance of the Plan and in accordance with the terms and conditions of this Agreement, including but not limited to Exhibits B and C to this Agreement.

#### **ARTICLE X: COORDINATION OF BENEFITS**

**10.1.0** A Coordination of Benefits provision shall be applied by the Contractor in accordance with applicable statutes and regulations of the New York State Department of Financial Services, as may be amended from time to time, or in accordance with the regulations appropriate to the applicable jurisdiction.

## **ARTICLE XI: CESSATION OF BENEFITS**

**11.1.0** Except as otherwise provided by law, all benefits to be provided by the Contractor in performance of the Plan, pursuant to the terms and conditions of this Agreement, shall cease upon the termination of this Agreement.

**11.2.0** An Enrollee's benefits may cease prior to the termination of this Agreement in accordance with the Certificate's or EOC's provisions pertaining to cessation of benefits.

**11.3.0** An Enrollee's coverage may be terminated by the Contractor for cause; however, in no case shall an Enrollee's benefits be terminated by the Contractor without 30 days prior written notification to the Department.

## **ARTICLE XII: RECORDS: INFORMATION TO BE MAINTAINED BY THE CONTRACTOR**

**12.1.0** The Contractor shall maintain records from which may be determined the names of all Enrollees and Enrollees' Dependents, if any, enrolled hereunder, and the type of benefits in force for each such Enrollee, together with the date when any benefits became effective and the effective date of any increase or decrease in the type of benefits. Such records shall be based on information provided to the Contractor by the Department. The Contractor shall promptly update its records to reflect the information transmitted from the Department's records.

**12.2.0** The Department and the Enrollee shall furnish to the Contractor all information which the Contractor may reasonably require with regard to any matters pertaining to the enrollment of the Enrollee under this Agreement. The Department agrees to allow the Contractor reasonable access to documents, books and records of the Department which may have a bearing on the benefits provided by the Contractor or calculation of the Contractor's premium payments as set forth under this Agreement.

**12.3.0** Should the Contractor request that any special reports be produced from the data in the Department's enrollment records, the Contractor may, at the sole discretion of the Department, be required to bear the production cost of such reports. Such requests shall be honored by the Department at its sole discretion.

## **ARTICLE XIII: REPORTS**

**13.1.0** The Contractor must submit financial, management, health services utilization, and Medicare Part D administration reports, including but not limited to those identified in

Article VI of this Agreement, as may be required by the Department for its use in the review and management of NYSHIP.

- 13.2.0** Upon request of the Department, the Contractor shall furnish to the Department a copy of any member satisfaction survey prepared by Contractor and, where the survey methods permit, shall separately identify the survey results of NYSHIP Enrollees. If the number of NYSHIP Enrollees in the Contractor's plan is nominal as measured by either the gross number of Enrollees or as a percentage of the Contractor's total Enrollees, or if the Department requires an additional satisfaction survey, the Department will meet with the Contractor to agree on the scope of the desired survey and respective responsibility for any associated costs.
- 13.3.0** Upon request of the Department, the Contractor shall furnish to the Department evidence of maintenance of satisfactory contingent reserve funds and/or existence of an adequate risk sharing arrangement or reinsurance contracts and/or copies of filed examination reports by the New York State Department of Health and Department of Financial Services or the appropriate regulatory and/or oversight agency in the Contractor's jurisdiction.
- 13.4.0** Health Services Utilization Reports will include, but not be limited to, the annual Schedule M, Complaint/Grievance/External Appeal Reports The Contractor shall, upon request of the Department, provide such other reports when required by one or more members of the Joint Labor Management Committee which participate in the Department's Health Insurance Program.
- 13.5.0** If the Department desires additional reports not otherwise specified in this Agreement, New York Public Health Law Article 44, or by New York Insurance Law Article 43, or if the Department desires to change the format of those reports, the Department and Contractor agree to discuss the development and costs related to such additional reports or amended formats.
- 13.6.0** The Department shall keep all Contractor-specific reports and information strictly confidential and shall not disclose the reports, any information obtained from the reports, or any information obtained through an audit of the Contractor to any other Contractor, insurer or to the public except as directed by a court of competent jurisdiction or as necessary to comply with applicable New York State or federal law or regulations. Except as required by law, regulatory requirements or in connection with normal business operations, no such records may be otherwise used or released to any person by the

Contractor, the Department, their respective agencies or representatives, either during the term of this Agreement or in perpetuity thereafter. Deliberate or repeated accidental breach of this provision may, at the sole discretion of the Department, be grounds for termination of this Agreement. Notwithstanding the above, the Department as it deems necessary may use aggregate data as reflective of information contained in the reports submitted by the Contractor.

#### **ARTICLE XIV DETERMINATION OF RATE BASIS, PAYMENT OF PREMIUMS AND GRACE PERIOD**

**14.1.0** The Department shall establish the premium rates to be paid to the Contractor during the term of this Agreement in accordance with the following:

**14.1.1** The Contractor shall submit a premium rate or rates to the Department no later than September 1 of each year, for the following calendar year. The premium rate or rates shall be accompanied by the Contractor's most recent available year-to-date loss ratio for the community pool in which Enrollees are included.

**14.1.2** The premium rates for a Contractor whose Service Area lies wholly within the State shall be guaranteed rates under 11 NYCRR 52.42 (b). The premium rate guaranteed shall be the presently prevailing approved or filed premiums or the Contractor's best estimate of the expected approved or filed premium rates for the following year adjusted by any prospective or retrospective adjustments required for guaranteed premium rates under 11 NYCRR 52.42 (b). The Contractor, upon request shall provide an explanation for the premium rate that has been quoted. The Contractor shall also provide the Department with copies of all loss ratio reports required by Section 4308 (h) (1) of the Insurance Law at the same time such reports are submitted to the NYS Department of Financial Services.

**14.1.3** In the event Contractor has multiple geographic rating regions within the State, the Contractor may submit premium rates for each geographical rating region. The Department reserves the right for its own purposes, to blend, or to request the Contractor to blend, the guaranteed rates into common premium rates to be the basis for payment to the Contractor. Any blended rate must be weighted based on the number of Enrollees and Dependents enrolled with the Contractor in each region. If the Contractor performs the blending, the Contractor must submit documentation as requested by the Department for its review of the resulting blended rate.

- 14.1.4** In the event the Contractor has multiple geographic rating regions within and outside New York State, the premium rate submitted for the geographic regions outside New York State shall be based upon the premium rate submitted for a geographic rating region within New York State.
- 14.1.5** If the Contractor has no premium rate(s) subject to filing with or approval by the NYS Department of Financial Services then the premium rate(s) determined as payable by the Department shall be based on the premium rate(s) filed with and approved, or pending approval, by the appropriate regulatory and/or oversight agency in the Contractor's jurisdiction.
- 14.2.0** In the event that the premium rate paid by the Department to the Contractor during the term of this Agreement, is revised by the NYS Department of Financial Services or other appropriate regulatory and/or oversight agency in the Contractor's jurisdiction, the Department shall adjust the Department's share of the premium paid to the Contractor to reflect such revision. Such adjustment shall be calculated by the Department to recapture excess Department premium paid by the Department to the Contractor if the premium rate paid exceeds the approved premium rate, or the Department shall distribute additional Department share premium due to the Contractor if the premium rate paid is less than the approved premium rate. The Department may make such adjustment through subsequent year premium rates paid to the Contractor, or at its option, adjust the premium rate paid to the Contractor prior to renewal of this Agreement.
- 14.3.0** The Department shall make premium payments to the Contractor on the first day of each coverage period, starting with the effective date of this Agreement; the coverage period shall be determined by the Department. The total amount of premium payment for each coverage period shall be calculated by the Department by multiplying the number of Enrollees enrolled in the Plan by the premium rate then in effect for the respective types of coverage.
- 14.4.0** The payment of any premium shall not maintain the benefits under this Agreement in force beyond the day immediately preceding the next due date, except as follows:
- 14.4.1** A grace period of forty-five (45) days shall be granted by the Contractor to the Department for the payment of premium accruing under this Agreement. During the grace period, this Agreement shall remain in force, but the Department shall be liable to the Contractor for the payment of premium accruing for the period the Agreement continues in force.



**14.4.2** If the Department fails to pay any premium payment within the grace period, this Agreement may be terminated on the last day of such grace period, except that if written notice is given by the Department to the Contractor prior to the expiration of the grace period that this Agreement is to be terminated before the expiration of the grace period, this Agreement shall be terminated as of the date of receipt of such written notice by the Contractor or the date specified by the Department for such termination, whichever is later. In such instance, subject to the Department's review and approval, the Department shall be liable to the Contractor for the payment of the pro-rata premium payment for the period commencing with the last due date and ending with the date of termination.

**14.4.3** On an annual basis coinciding with the end of the State's fiscal year, the Statewide Financial System (SFS) will be shut down for approximately one to two weeks during which no payment transactions will be processed. The shutdown typically occurs between the last week of March and first week of April. The SFS may also be shut down for short periods during other times of the year for maintenance or upgrades or other reasons that are outside the control of the Department. Payments delayed as a result of an SFS shut down will be processed on the first business day after the SFS returns to operation.

#### **ARTICLE XV: COMMUNICATIONS AND MARKETING PROGRAM**

**15.1.0** During an Option Transfer Period established by the Department, the Department shall provide potential Enrollees with option transfer procedural information, including but not limited to the amount of the Enrollee contribution to the premium cost of the Contractor. Upon written notice of the Department's approval of the Contractor's participation for the subsequent Plan Year, the Contractor shall prepare marketing materials and other general educational material for distribution to Employees and Retirees which shall be factual and easily understood. Written benefit descriptions must include all applicable copayments, and significant limitations and exclusions. The material must state that there may be additional exclusions and/or limitations which are not listed but are available on request. A description of any changes in the level of benefits and/or method of delivery of such benefits since the last offering must be included. Information regarding the availability of an Enrollee Certificate of Insurance, EOC and Summary of Benefits and Coverage must also be included.

- 15.2.0** The Contractor must comply with the federal Patient Protection and Affordable Care Act (ACA), to produce, revise, distribute, and translate upon request a Summary of Benefits and Coverage (SBC) accurately describing the NYSHIP group benefits and coverage. The SBC must be provided to the Department in an electronic format as a PDF document no later than 30 days before the beginning of each Plan Year. The Contractor must distribute a SBC to any eligible Employee or Retiree contacting the Contractor or the Department to request a copy in accordance with ACA requirements for timely distribution. Annually at plan renewal and upon material modification of the SBC, the Contractor must provide timely notice to all current Enrollees via a postcard, plan materials, or other ACA-compliant means of notification, of how to view or obtain a copy of the SBC from the Contractor.
- 15.3.0** Upon request of the Department, the Contractor shall provide a representative to answer questions at a Health Fair and/or make a presentation to potential Enrollees, make available copies of Certificates of Insurance and/or EOCs, applicable riders and the SBC that pertains to this Agreement.
- 15.4.0** The Contractor shall not distribute generic marketing material to potential Enrollees if, in the Department's judgment, these materials contain eligibility, benefit descriptions, or other provisions which are substantially inconsistent with those provisions applicable to NYSHIP Enrollees covered by the Contractor.
- 15.5.0** The Department shall have the right to review and approve drafts of all printed materials proposed for distribution to Enrollees. The Contractor's electronic or print media marketing campaigns shall be accurate, professional and appropriate, and shall be subject to the Department's review, if specifically addressed to Enrollees. The Department shall provide the Contractor with guidelines for acceptable marketing materials.
- 15.6.0** The Department shall notify the Contractor of the due date for submitting proposed marketing materials for use during the Option Transfer Period. The Department shall complete a review of the proposed marketing materials prior to the beginning of the Option Transfer Period. The Contractor shall have the right to prepare, submit and clarify factual information about its benefits contained in such publications prior to distribution. Upon approval of the Contractor's marketing material, the Department will authorize the Contractor to distribute it.

**15.7.0** In resolving Enrollee grievances, the materials given to potential Enrollees must be considered. The Contractor shall be liable for any errors, omissions or misrepresentations contained in the materials which the Contractor has prepared under this Agreement and upon which any Enrollee has relied to his/her detriment.

#### **ARTICLE XVI: AUDIT AUTHORITY**

**16.1.0** In addition to the Audit Authority requirements specified in Appendices A and B to this Agreement, the Contractor acknowledges that the Department has the authority to conduct financial and performance audits of the Contractor's delivery of HMO services in accordance with the Agreement and any applicable State and federal statutory and regulatory authorities;

**16.2.0** Such audit activity may include, but not necessarily be limited to, the following activities:

**16.2.1** Review of the Contractor's activities and records relating to the documentation of its performance under this Agreement in areas such as determination of Enrollee or Dependent eligibility and application of various Department program administrative features (e.g., dependent survivor benefits, reasonable adjudication of disabled dependent status).

**16.2.2** Comparison of the information in the Contractor's enrollment file to that on the enrollment reports issued to the Contractor by the Department.

**16.2.3** Assessment of the Contractor's information, utilization and demographic systems to the extent necessary to verify accuracy of data on the reports provided to the Department in accordance with Article XIII - Reports, of this Agreement.

**16.3.0** The Contractor shall maintain and make available documentary evidence necessary to perform such reviews. Documentation maintained and made available by the Contractor may include, but is not limited to, source documents, books of account, subsidiary records and supporting work papers, claim documentation, pertinent contracts, subcontracts, Provider agreements, and correspondence;

**16.4.0** The Contractor shall make available for audit all data in its computerized files that is relevant to and subject to the Agreement. Such data may, at Department discretion, be submitted to the Department in machine-readable format, or the data may be extracted by the Department, or by the Contractor under the direction of the Department;

**16.5.0** The Contractor shall support audits conducted by the Department, Office of the State Comptroller or any designee of these agencies, as follows, including but not limited to:

- 16.5.1** Providing ample audit resources including access to the Contractor's online system to the Department and OSC at their respective offices through the date of the final financial settlement of the Agreement;
- 16.5.2** The capability and contractual right of the State to effectively audit the Contractor's Provider Network, including the use of statistical sampling audit techniques and the extrapolation of errors; and
- 16.5.3** Providing full cooperation with all Department and/or OSC audits consistent with the requirements of Appendices A and B and as set forth in this Agreement including provision of access to protected health information and all other confidential information when required for audit purposes as determined by the Department and/or OSC as appropriate. The Contractor must respond to all State (including OSC) audit requests for information and/or clarification within fifteen (15) Business Days. The Contractor must perform timely reviews and respond in a time period specified by the Department to preliminary findings submitted by the Department or the OSC's audit unit in accordance with the requirements of Article XVI "Audit Authority" in this Agreement. Such audits may include, but are not limited to both electronically submitted and paper claims. Use of statistical sampling of claims and extrapolation of findings resulting from such samples shall be acceptable techniques for identifying claims errors. The Contractor shall facilitate audits of Network Providers, including on-site audits, as requested by the Department and/or OSC;
- 16.6.0** The Contractor shall, at the Department's request, and in a time period specified by the Department, search its files, retrieve information and records, and provide to the auditors such documentary evidence as they require. The Contractor shall make sufficient resources available for the efficient performance of audit procedures;
- 16.7.0** The Contractor shall comment on the contents of any audit report prepared by the Department and transmit such comments in writing to the Department within 30 days of receiving any audit report. The response will specifically address each audit recommendation. If the Contractor agrees with the recommendation, the response will include a work plan and timetable to implement the recommendation. If the Contractor disagrees with an audit recommendation, the response will give all details and reasons for such disagreement. Resolution of any disagreement as to the resolution of an audit recommendation shall be subject to the dispute resolution procedures set forth in Appendix B of this Agreement.

- 16.8.0** If the Contractor has an independent audit performed of the records relating to this Agreement, a certified copy of the audit report shall be provided to the Department within 10 days after receipt of such audit report by the Contractor.
- 16.9.0** The audit provisions contained herein shall in no way be construed to limit the audit authority or audit scope of the Office of the State Comptroller as set forth in either Appendix A of this Agreement, Standard Clauses for All New York State Contracts, or Appendix B, Standard Clauses for All Department Contracts.

## **ARTICLE XVII: CONFIDENTIALITY**

In addition to the Confidentiality requirements specified in Appendices A and B to this Agreement, the following provisions shall apply:

- 17.1.0** All claims and enrollment records relating to the Agreement are confidential and shall be used by the Contractor solely for the purpose of carrying out its obligations under the Agreement and for providing the Department with material and information as may be specified elsewhere in this Agreement;
- 17.2.0** Except as directed by a court of competent jurisdiction, or as necessary to comply with applicable New York State or federal law(s) or regulation(s), or with the written consent of the Enrollee and Dependent, no records may be otherwise used or released to any party other than the Department by the Contractor, its officers, employees, agents, consultants, Key Subcontractors or Affiliates either during the term of the Agreement or in perpetuity thereafter. Deliberate or repeated accidental breach of this provision may, at the sole discretion of the Department, be grounds for termination of the Agreement;
- 17.3.0** The Contractor, its officers, employees, agents, consultants and/or any Key Subcontractors or Affiliates agree to comply, during the performance of the Agreement, with all applicable federal and State privacy, security and confidentiality statutes, including but not limited to the Personal Privacy Protection Law (New York Public Officer's Law Article 6-A, as amended), and its implementing regulations, policies and requirements, for all material and information obtained by the Insurer through its performance under the Agreement, with particular emphasis on such information relating to enrollees and dependents;

- 17.4.0** The Contractor shall be responsible for assuring that any Agreement between the Contractor and any of its officers, employees, agents, consultants and/or Key Subcontractors or Affiliates contains a provision that strictly conforms to the various confidentiality provisions of this Agreement;
- 17.5.0** The Contractor shall promptly advise the Department of all requests made to the Contractor for information regarding the performance of services under this Agreement, including, but not limited to, requests for any material and information provided by the Department, except as required by Key Subcontractors or Affiliates solely for the purpose of fulfilling the Insurer's obligations under this Agreement or as required by law.

#### **ARTICLE XVIII: USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION**

- 18.1.0** For purposes of this Agreement, the term "Protected Health Information" ("PHI") means any information, including demographic information collected from an individual, that relates to the past, present, or future physical or mental health or condition of an individual, to the provision of health care to an individual, or to the past, present, or future payment for the provision of health care to an individual, that identifies the individual, or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual. Within the context of this Agreement, PHI may be received by the Contractor from the Department or may be created or received by the Contractor on behalf of the Department. All PHI received or created by the Contractor as a consequence of its performance under this Agreement is referred to herein collectively as "Department's PHI."
- 18.2.0** The Contractor acknowledges that the Department administers on behalf of New York State several group health plans as that term is defined in HIPAA's implementing regulations at 45 CFR Parts 160 and 164, and that each of those group health plans consequently is a "covered entity" under HIPAA. These group health plans include NYSHIP, which encompasses the Empire Plan as well as participating health maintenance organizations; the Dental Plan, and the Vision Plan. In this capacity, the Department is responsible for the administration of these "covered entities" under HIPAA. The Contractor further acknowledges that the Department has designated NYSHIP and the Empire Plan as an Organized Health Care Arrangement (OHCA), respectively. The Contractor further acknowledges that the Contractor is a HIPAA "business associate" of the Department as a consequence of the Contractor's provision of services to and/or on behalf of the Department within the context of the Contractor's performance under this Agreement, and that the Contractor's provision of such services

may involve the disclosure to the Contractor of individually identifiable health information from the Department or from other parties on behalf of the Department, and also may involve the Contractor's disclosure to the Department of individually identifiable health information as a consequence of the services performed under this Agreement.

**18.3.0 Permitted Uses and Disclosures of the Department's PHI:** The Contractor may use and/or disclose the Department's PHI solely in accordance with the terms of this Agreement. In addition, the Contractor may use the Department's PHI to provide data aggregation services relating to the health care operations of the Department. Further, the Contractor may use and disclose the Department's PHI for the proper management and administration of the Contract if such use is necessary for the Contractor's proper management and administration or to carry out the Contractor's legal responsibilities, or if such disclosure is required by law or the Contractor obtains reasonable assurances from the person to whom the information is disclosed that it shall be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Contractor of any instances of which it is aware in which the confidentiality of the PHI has been breached.

**18.4.0 Nondisclosure of the Department's PHI:** The Contractor shall not use or further disclose the Department's PHI other than as permitted or required by this Agreement or as otherwise required by law. The Contractor shall limit its uses and disclosures of PHI when practical to the information comprising a Limited Data Set and in all other cases to the minimum necessary to accomplish the intended purpose of the PHI's access, use, or disclosure.

**18.5.0 Safeguards:** The Contractor shall use appropriate, documented safeguards to prevent the use or disclosure of the Department's PHI otherwise than as provided for by this Agreement. The Contractor shall maintain a comprehensive written information security program that includes administrative, technical, and physical safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities, to reasonably and appropriately protect the confidentiality, integrity and availability of any electronic PHI that it creates, receives, maintains, or that it transmits on behalf of the Department pursuant to this Agreement.

## **18.6.0 Breach Notification:**

**18.6.1 Reporting:** The Contractor shall report to the Department any breach of unsecured PHI, even if the breach is not reportable under HIPAA, including any use or disclosure of the Department's PHI otherwise than as provided for by this Agreement, of which the Contractor becomes aware. Further, the Contractor shall report to the Department any security incident of which it becomes aware. "Security incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information, or interference with system operations in an information system. The Contractor shall notify the Department within five (5) Business Days of the date the Contractor becomes aware of the event.

**18.6.2 Required Information:** The Contractor shall provide the following information to the Department within ten (10) Business Days of discovery except when, despite all reasonable efforts by the Contractor to obtain the information required, circumstances beyond the control of the Contractor necessitate additional time. Under such circumstances, the Contractor shall provide to the Department the following information as soon as possible and without unreasonable delay, but in no event later than thirty (30) Days from the date of discovery:

**18.6.2a** the date of the breach incident;

**18.6.2b** the date of the discovery of the breach;

**18.6.2c** a brief description of what happened;

**18.6.2d** a description of the types of unsecured PHI that were involved;

**18.6.2e** identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the breach;

**18.6.2f** A brief description of what the Contractor is doing to investigate the breach, to mitigate harm to individuals and to protect against any further breaches; and

**18.6.2g** any other details necessary to complete an assessment of the risk of harm to the individual.



**18.6.3** The Department will be responsible for providing notification to individuals whose unsecured PHI has been or is reasonably believed to have been accessed, acquired or disclosed as a result of a breach, as well as the Secretary and the media, as required by 45 CFR Part 164.

**18.6.4** The Contractor shall maintain procedures to sufficiently investigate the breach, mitigate losses, and protect against any future breaches, and to provide a description of these procedures and the specific findings of the investigation to the Department upon request.

**18.6.5** For purposes of this Agreement, "Unsuccessful Security Incidents" include activity such as pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service, and any combination of the above, so long as no such incident results in unauthorized access, use, or disclosure of electronic PHI.

**18.6.6** The Contractor shall mitigate, to the extent practicable, any harmful effects from any use or disclosure of PHI by the Contractor not permitted by this Agreement.

**18.7.0 Associate's Agents:** The Contractor shall require all of its agents or Key Subcontractors or Affiliates to whom it provides the Department's PHI, whether received from the Department or created or received by the Contractor on behalf of the Department, agree to the same restrictions and conditions on the access, use, and disclosure of PHI that apply to the Contractor with respect to the Department's PHI under this Agreement.

**18.8.0 Availability of Information to the Department:** The Contractor shall make available to the Department such information and documentation as the Department may require regarding any disclosures of PHI by the Contractor to fulfill the Department's obligations to provide access to, to provide a copy of, and to account for disclosures of the Department's PHI in accordance with HIPAA and its implementing regulations. The Contractor shall provide such information and documentation within a reasonable amount of time of its receipt of the request from the Department.

**18.9.0 Amendment of the Department's PHI:** The Contractor shall make the Department's PHI available to the Department as the Department may require to fulfill the Department's obligations to amend individuals' PHI pursuant to HIPAA and its implementing regulations. The Contractor shall, as directed by the Department,

incorporate any amendments to the Department's PHI into copies of the Department's PHI as maintained by the Contractor.

**18.10.0 Internal Practices:** The Contractor shall make its internal practices, policies and procedures, books, records, and agreements relating to the use and disclosure of the Department's PHI, whether received from the Department or created or received by the Contractor on behalf of the Department, available to Department and/or the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by the Department and/or the Secretary for purposes of determining the Department's compliance with HIPAA and its implementing regulations.

**18.11.0 Termination:**

**18.11.1** This Agreement may be terminated by the Department at the Department's discretion if the Department determines that the Contractor, as a business associate, has violated a material term of this Article or of the Agreement with respect to the Contractor's obligations under this Article.

**18.11.2 *Disposition of the Department's PHI:*** At the time this Agreement is terminated, the Contractor shall, if feasible, return or destroy all of the Department's PHI, whether received from the Department or created or received by the Contractor on behalf of the Department, that the Contractor still maintains in any form and retain no copies of such information. Alternatively, if such return or destruction is not feasible, the Contractor shall extend indefinitely the protections of this Agreement to the information and shall limit further uses and disclosures to those purposes that make the return or destruction of the Department's PHI infeasible.

**18.12.0 Indemnification:** The Contractor agrees to indemnify, defend and hold harmless the State, the Department and Department's respective employees, officers, agents or other members of its workforce (each of the foregoing hereinafter referred to as "Indemnified Party") against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this Agreement or from any acts or omissions related to this Agreement by the Contractor or its employees, officers, Key Subcontractors or Affiliates, agents or other members of its workforce. Accordingly, the Contractor shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be imposed

upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results from the Contractor's acts or omissions hereunder. The Contractor's obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement.

**18.13.0 Miscellaneous:**

**18.13.1 Amendments:** This Article may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. The Parties agree to take such action as is necessary to amend this Article from time to time as is necessary to achieve and maintain compliance with the requirements of 45 CFR Parts 160-164.

**18.13.2 Survival:** The respective rights and obligations of the Business Associate (Contractor), and Covered Entity under HIPAA as set forth in this Article shall survive termination of this Agreement.

**18.13.3 Regulatory References:** Any reference herein to a federal regulatory section within the Code of Federal Regulations shall be a reference to such section as it may be subsequently updated, amended or modified.

**18.13.4 Interpretation:** Any ambiguity in this Article shall be resolved to permit covered entities to comply with HIPAA.

**ARTICLE XIX: NOTICES**

**19.1.0** All notices permitted or required hereunder shall be in writing and shall be transmitted either:

**19.1.1** via certified or registered United States mail, return receipt requested;

**19.1.2** by facsimile transmission;

**19.1.3** by personal delivery;

**19.1.4** by expedited delivery service; or

**19.1.5** by e-mail.

**19.2.0** Such notices shall be addressed as follows or to such different addresses as the Parties may from time-to-time designate:

**State of New York Department of Civil Service**

Name: Mr. David Boland

Title: Director, Employee Benefits Division

Address: EBD, Room 1106, Albany, NY 12239

Telephone Number: [REDACTED]

Facsimile Number: (518) 473-3292

E-Mail Address: [REDACTED]

**Excellus Health Plan, Inc.**

Name: Nicholas Carbone

Title: Account Manager

Address: 165 Court Street, Rochester, NY 14647

Telephone Number: [REDACTED]

Facsimile Number: (585) 238-4348

E-Mail Address: [REDACTED]

**19.3.0** 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.

**19.4.0** 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.

**ARTICLE XX: TERMINATION**

**20.1.0** In addition to the Termination of Agreement requirements specified in Appendices A and B to this Agreement, the following provisions shall apply:

- 20.1.1** The State retains the right to cancel the Agreement without cause and in its sole discretion, provided that the Department shall give written notice to the Contractor not less than thirty (30) Days prior to the date upon which termination shall become effective, such notice to be made via registered or certified mail, return receipt requested or hand delivered. The date of such notice shall be deemed to be the date of postmark in the case of mail or the date of hand delivery. This provision should not be understood as waiving the State's right to terminate the Agreement for cause or to stop work immediately for unsatisfactory work, but is supplementary to that provision. In the event of cancellation without cause by the State, the State agrees to negotiate a payment based on the Fixed Hourly Rates as set forth in the Contractor's Financial Proposal for hours actually worked by Contractor personnel on a given project activity, not to exceed the fixed fee of the project activity;
- 20.1.2** If the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, the State, in its sole discretion, may terminate the Agreement or may exercise such other remedies as shall be available under the Agreement, at law and/or equity;
- 20.1.3** No delay or omission to exercise any right, power or remedy accruing to the State or Department upon breach or default by the Contractor under the Agreement shall impair any such right, power or remedy, or shall be construed as a waiver of any such breach or default, or any similar breach or default thereafter occurring, nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing;
- 20.1.4** If, due to default that remains uncured for the period provided herein, a third party shall commence to perform Contractor's obligations under the Agreement, the State shall thereafter be released from all obligations to Contractor hereunder, including any obligation to make payment to Contractor, provided however that the State shall continue to be obliged to pay for any and all Project Services provided prior to any such date. If the State employs a third party to perform Contractor's obligations under the Agreement, Contractor shall be liable for the payment of any cost differential that the State incurs as a result of having to employ such third party to cure or resolve the issue;

**20.1.5** In the event of the Contractor's default, in addition to availing itself of specific remedies set forth in the Agreement, the State may pursue all legal and equitable remedies for breach. In addition to pursuing any other legal or equitable remedies, the State shall have the right to take one or more of the following actions:

**20.1.5a** terminate the Agreement in whole or in part;

**20.1.5b** suspend, in whole or in part, payments due Contractor under the Agreement;  
and

**20.1.5c** pursue equitable remedies to compel Contractor to perform.

**20.1.6** The Contractor shall be liable for any and all excess costs for remedies pursued by the State, and for costs incurred by the State in procuring alternate Services;

**20.1.6a** ***For Violation of Procurement Lobbying Law.*** The Department reserves the right to terminate the Agreement in the event it is determined by the Department in its sole discretion that the certification filed by the Contractor in accordance with §139-j and/or §139-k of the New York State Finance Law was intentionally false or intentionally incomplete. Upon such finding, the Department may, at its sole option, exercise its termination right by providing 10 days written notification to the Contractor, or providing notice in accordance with other written notification terms in the Agreement;

**20.1.6b** ***For Violation of Section 5-a of the Tax Law.*** The Department reserves the right to terminate the Agreement in the event that Contractor fails to file a certification pursuant to section 5-a of the Tax Law or the Tax Department or OFT discovers that the certification(s) filed by the Contractor pursuant to section 5-a of the Tax Law is/are false. Upon such finding(s), the Department may exercise its termination right by providing written notification to the Contractor;

**20.1.6.c** ***Termination Notice.*** Notices required by this section shall be provided consistent with Article 9 of Appendix B; and

**20.1.6.d** ***Mitigation of Costs.*** The Contractor shall not undertake any additional or new contractual obligations on or after the date of return receipt notice without the prior written approval of the State. On or after the date of return receipt notice and during the termination notice period, the Contractor shall take all commercially reasonable and prudent actions to close out unnecessary outstanding, existing obligations as economically as possible for the State.

## **ARTICLE XXI: IRAN DIVESTMENT ACT**

**21.1.0** 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) was charged with the responsibility to develop a list (Prohibited Entities List) of “persons” who are engaged in “investment activities in Iran” (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list was posted to the OGS website on August 10, 2012.

**21.2.0** By entering into this Contract, Contractor (or any assignee) certifies that it is not on the “Entities Determined To Be Non-Responsive Bidders/Offerors Pursuant to The New York State Iran Divestment Act of 2012” list (Prohibited Entities List) posted on the OGS website at <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on the Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that after should it seek to renew or extend the Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of the Contract will be required to certify that it is not on the Prohibited Entities List before the Department may approve a request for Assignment of the Contract.

**21.3.0** During the term of the Contract, should the Department receive information that a person (as defined in State Finance Law 165-a) is in violation of the above-referenced certification, the Department will review such information and 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 ninety (90) days after the determination of such violation, then the Department shall take such action as may be appropriate and provided for by law, rule or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

The Department reserves the right to reject any request for renewal, extension, or assignment for an entity that appears on the Prohibited Entities List prior to the renewal, extension or assignment of the Contract, and pursue a responsibility review with Contractor should it appear on the Prohibited Entities List hereafter.

## **ARTICLE XXII: VENDOR RESPONSIBILITY**

- 22.1.0** The Contractor is required to provide the Department with an updated Vendor Responsibility Questionnaire when requested to do so by the Department throughout the term of the Agreement. Regardless, the Contractor is required to report to the Department any material changes in the information reported in its initial Vendor Responsibility Questionnaire.
- 22.2.0** The Contractor shall at all times during the Agreement term remain responsible. The Contractor agrees, if requested by the Commissioner or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- 22.3.0 Suspension of Work (for Non-Responsibility):** The Commissioner or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when he or she discovers information that call into question the responsibility of the Contractor. In the event of such suspension, the Contractor must comply with the terms of the suspension order. Agreement activity may resume at such time as the Commissioner or his or her designee issues a written notice authorizing a resumption of performance under the Agreement.
- 22.4.0 Termination (for Non-Responsibility):** Upon written notice to the Contractor, a reasonable opportunity to be heard with the appropriate Department officials or staff, the Contract may be terminated by the Commissioner or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of the Department or his or her designee to be non-responsible. In such an event, the Commissioner or his or her designee may complete the requirements of the Agreement in any manner he or she may deem advisable and pursue legal or equitable remedies for breach.





**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

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

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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, licenser, 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

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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). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

**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 (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim 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.

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**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

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and void. The Contractor shall so notify the State Comptroller within 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.



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**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, 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 the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, 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 and 5 NYCRR 143, 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

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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 the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(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, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts 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

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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. 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 Department of Economic Development's Division 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

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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 30 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.

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

NYS Department of Economic Development  
Division for Small Business  
Albany, New York 12245  
Telephone: 518-292-5100  
Fax: 518-292-5884  
email: [opa@esd.ny.gov](mailto:opa@esd.ny.gov)

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  
633 Third Avenue  
New York, NY 10017  
212-803-2414  
email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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

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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.

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**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.

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerors pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the

state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 Days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

*January 2014*



**APPENDIX B**  
**STANDARD CLAUSES FOR ALL DEPARTMENT CONTRACTS**

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**1. INTEGRATION**

The contract executed between the Department and the Contractor (or Purchase Order issued by the Department) is hereinafter referred to as the Agreement. The Agreement, including all Exhibits and Appendices, including this Appendix B, copies of which are attached thereto, and incorporated therein by reference, constitutes the entire agreement between the Parties for the purpose of the fulfillment of Program Services or Project Services. All prior agreements, representations, statements, negotiations and undertakings are superseded hereby.

All statements made by the Department shall be deemed to be representations and not warranties.

**2. EXECUTORY PROVISION**

Section 112 of the State Finance Law requires that any contract made by a State department which exceeds fifty thousand dollars (\$50,000) in amount be first approved by the Comptroller of the State of New York before becoming effective. The Parties recognize that, if the Agreement is for fifty thousand dollars or more, it is wholly executory until and unless approved by the Comptroller of the State of New York.

**3. CHOICE OF LAW**

The Parties agree that the Agreement shall be interpreted according to the laws of the State of New York, except where the federal supremacy clause requires otherwise. The Contractor shall be required to bring any legal proceeding against the Department arising from the Agreement in New York State courts located in Albany County.

**4. DISPUTE RESOLUTION**

Except as otherwise provided in the Agreement, any dispute raised by the Contractor concerning any question of fact or law arising under the Agreement which is not disposed of by mutual agreement of the Parties shall be decided initially by the designee of the President of the Civil Service Commission (President). A copy of the written decision shall be furnished to the Contractor. The Parties shall proceed diligently with the performance of the Agreement and shall comply with the provisions of such decision and continue to comply pending further resolution of any such dispute as provided herein. The decision of the designee of the President shall be final and conclusive unless, within ten (10) Days from the receipt of such decision, the Contractor furnishes the President a written appeal. In the event of an appeal, the President shall promptly review the initial decision, and confirm, annul, or modify it. The decision of the President shall be final and conclusive unless, as determined by a court of competent jurisdiction, it violates one of the provisions of section 7803 of the Civil Practice Law and Rules. Pending final decision of any Article 78 proceeding hereunder, both Parties shall proceed diligently with the performance of the Agreement in accordance with the President's decision.

**5. WAIVER OF BREACH**

No term or provision of the 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. No consent by a Party to, or waiver of, a breach under the Agreement shall constitute a consent to, a waiver of, or excuse for any other, different or subsequent breach.

**6. NEW YORK STATE REQUIREMENTS**

The Contractor acknowledges that it is bound by the terms of Appendix A, Standard Clauses For All New York State Contracts, which is attached and incorporated by reference to the Agreement.

**7. OUTSIDE OF SCOPE**

The Contractor agrees that any and all work performed outside the scope of the Agreement shall be deemed to be gratuitous and not subject to any charge, cost or payment of any kind.

**8. NON-ASSIGNABILITY**

Neither the rights nor the obligations of the Contractor under the Agreement may be conveyed, assigned, delegated, or otherwise transferred in any manner whatsoever by the Contractor, either in whole or in part, without the prior written approval of the Department.

**9. NOTIFICATION**

All notices permitted or required by the Agreement to be given by one Party to the other shall be in writing and shall be transmitted either (1) via certified or registered mail, return receipt requested; (2) by facsimile transmission; (3) by personal delivery; (4) by expedited delivery service; or (5) by e-mail.

**10. INDEMNIFICATION**

The Contractor agrees to indemnify, defend and save harmless the Department, the State, its officers, agents and employees, for any claims or losses the Department, the State or any individuals may suffer when such claims or losses result from the claims of any person or organization for any and all injuries or damages caused by the negligent acts or omissions of the Contractor, its officers, employees, agents, consultants and/or sub-contractors in performance of the Agreement. Furthermore, the Contractor agrees to indemnify, defend and save harmless the Department and the State, its officers, agents, and employees from any and all claims or losses caused by the acts or omissions of any and all contractors, sub-contractors, consultants and any other persons, firms, or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of the Agreement and from all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of the Agreement, and against any loss, damages or actions, including, but not limited to, costs and expenses, for violation of proprietary rights, copyrights, patents, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use, or disposition of any material, information or data furnished under the Agreement, or based on any libelous or otherwise unlawful matter contained in such material, information or data, except as otherwise provided in the Article entitled "Patent Copyright or Proprietary Rights Infringement" of this Appendix B.

The Contractor also shall provide indemnification against all losses, and/or cost expenses (including reasonable counsel fees) that may be incurred by reason of the Contractor's breach of any term, provision, covenant, warranty, or representation contained herein and/or in connection with the enforcement of the Agreement or any provision hereof.

The Department does not agree to any indemnification provisions in any documents attached hereto that require the Department or the State of New York to indemnify or save harmless the Contractor or third parties.

Notwithstanding anything to the contrary in the Agreement, neither the Department nor the Contractor shall be liable to the other for any special, consequential, or punitive damages, or loss of profits or revenues, whether such damages are alleged as a result of tort (including strict liability), contract, warranty, or otherwise, arising out of or relating to either Party's acts or omissions under the Agreement.

**11. PATENT, COPYRIGHT OR PROPRIETARY RIGHTS INFRINGEMENT**

The Contractor, solely at its expense, shall defend any claim or suit which may be brought against the Department or the State for the infringement of United States patents, copyrights or proprietary rights arising from the Contractor's or the Department's use of any software, equipment, data, materials and/or information of any kind prepared, developed or furnished by the Contractor in connection with performance of the Agreement and, in any such suit, shall satisfy any final judgment for such infringement. The Department shall give the Contractor written notice for such claim or suit and full right and opportunity to conduct the defense thereof, together with full information and all reasonable cooperation.

If principles of governmental or public law are involved, the State of New York may participate in the defense of any action identified under this Article, but no costs or expenses shall be incurred upon the account of the Contractor without the Contractor's written consent.

If, in the Contractor's opinion, any software, equipment, data, materials and/or information prepared, developed or furnished by the Contractor is likely to or does become the subject of a claim of infringement of a United States patent, copyright or proprietary right, then, without diminishing the Contractor's obligation to satisfy any final award, the Contractor may, with the Department's prior written approval, substitute other equally suitable software, equipment, materials, data and/or information. In the event that an action at law or in equity is commenced against the Department arising out of a claim that the Department's use of any software, equipment, materials and/or information under the Agreement infringes on any patent, copyright, or proprietary right, such action shall be forwarded by the Department to the Contractor for defense and indemnification under this Article and to the Office of the Attorney General of the State of New York together with a copy of the Agreement. If upon receipt of such request for defense, or at any time thereafter, the Contractor is of the opinion that the allegations in such action, in whole or in part, are not covered by the defense and indemnification set forth herein, the Contractor shall immediately notify the Department and the Office of the Attorney General of the State of New York, in writing, and shall specify to what extent the Contractor believes it is and is not obligated to defend and indemnify under the terms and conditions of the Agreement. The Contractor shall in such event protect the interests of the State of New York and shall take the steps necessary to secure a continuance to permit the State of New York to appear and defend its interest in cooperation with the Contractor, as is appropriate, including any jurisdictional defenses which the State shall have.

**12. DATE/TIME WARRANTY**

The Contractor warrants that products furnished pursuant to the Agreement shall be able to accurately process, date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific products and/or services must perform as a package or system, this warranty shall apply to the products and/or services as a system.

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

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

**13. VIRUS WARRANTY**

Product contains no viruses, either known to the Contractor or which reasonably should have been known to the Contractor exercising due diligence. The Contractor is not responsible for viruses introduced at the Department's site.

**14. TITLE AND OWNERSHIP WARRANTY**

The Contractor warrants, represents and conveys (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver perpetual license rights to any Product(s) transferred to the Department under the Agreement. The Contractor shall be solely liable for any costs of acquisition associated therewith. The Department may require the Contractor to furnish appropriate written documentation establishing the above rights and interests as a condition of payment. The Department's request or failure to request such documentation shall not relieve the Contractor of liability under this warranty.

**15. USE RESTRICTIONS AND INTELLECTUAL PROPERTY**

The Parties agree that all work by the Contractor for the Department is intended as work for hire. The Parties agree that the Contractor's work is specifically ordered and commissioned for use as contributions to a collective work, or is other such work as specified by section 101(2) of the U.S. Copyright Act [17 U.S.C. 101(2)], and is intended to be a work for hire that is made for the use and ownership of the State of New York and the Department. Furthermore, the Department and the Contractor agree that the State of New York and the Department are the owners of all copyrights regarding the work. The Contractor warrants to the State of New York and the Department that the Contractor, and all of its subcontractors and their employees, who have been, or may be used in regard to the Agreement, forfeits all past or future claims of title or ownership to the work produced.

Materials such as forms and publications used by the Contractor in the course of its performance under the Agreement which have been agreed upon by the Parties as generic materials are specifically excluded from this provision.

**16. OWNERSHIP/TITLE TO PRODUCT DELIVERABLES**

For purposes of this Article, the term "Department" is understood to mean the Department acting on behalf of the State.

**(A) Definitions**

1. Product(s):

A deliverable furnished under the Agreement by or through the Contractor, including existing and custom Product(s), including, but not limited to: a) components of the hardware environment; b) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings); c) third party software; d) modifications, customizations, custom programs, program listings, programming tools, data, modules, components; and e) any properties embodied therein, whether in tangible or intangible form (including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, source code, object code).

2. Existing Product(s):

Tangible Product(s) and intangible licensed Product(s) which exist prior to the commencement of work under the Agreement. The Contractor retains the burden of proving that a particular product existed before commencement of the Agreement.

3. Custom Product(s):

Product(s), preliminary, final or otherwise, which are created or developed by the Contractor, or its subcontractors, partners, employees, or agents under the Agreement for the benefit of the Department.

**(B) Title to Project Deliverables**

The Contractor acknowledges that it is commissioned by the Department to perform services detailed in the Agreement. Unless otherwise specified in writing in the Agreement, the Department shall have ownership and/or license rights as follows:

1. Existing Product(s):

a) Hardware - Title and ownership of Existing Hardware Product shall pass to Department upon acceptance.

b) Software - Title and ownership to Existing Software Product(s) delivered by the Contractor under the Agreement which is normally commercially distributed on a license basis by the Contractor or other independent software vendor/proprietary owner ("Existing Licensed Product"), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with the Contractor or other independent software vendor/proprietary owner ("ISV"). Effective upon acceptance, such Product shall be licensed to the Department in accordance with the Contractor or ISV owner's standard license agreement, provided, however, that such standard license, must, at a minimum: (a) grant the Department a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless the Contractor advises the Department as part of the Contractor's bid proposal that adaptation will violate existing agreements or statutes and the Contractor demonstrates such to the Department's satisfaction) and distribute Existing Licensed Product to the Department up to the license capacity stated in the work order with all license rights necessary to fully effect the general business purpose(s) stated in the Agreement and (b) recognize the State of New York as the licensee. Where these rights are not otherwise covered by the ISV's standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense. The Department shall reproduce all copyright notices and any other legend of ownership on any copies authorized under this paragraph.

2. Custom Product(s):

Effective upon creation of Custom Product(s), the Contractor hereby conveys, assigns and transfers to State the sole and exclusive rights, title and interest in Custom Product(s), whether preliminary, final or otherwise, including all trademark and copyrights. The Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Product(s) are protected against unauthorized copying, reproduction and marketing by or through the Contractor, its agents, employees, or subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under the Agreement in the course of the Contractor's business.

Where payment for Custom Product does not involve Certificates of Participation (COPS) pursuant to Article 5-A of the State Finance Law or other third party

financing, the Department may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of State taking exclusive ownership and title to such Products. In such case, the Department shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purpose(s) as stated herein.

In the event that the Contractor wishes to obtain ownership rights to Custom Product(s), the sale or other transfer shall be at fair market value as determined by the Parties at the time of such sale or other transfer, and must be pursuant to a separate written agreement in a form acceptable to the State which complies with the terms of this paragraph.

3. **Documentation, Data & Reports**

The Department shall own title to all documentation, drawings, (e.g., engineering drawings, system diagrams, logic/schematics, plans, reports, training, maintenance or operating manuals), including network design, equipment configurations and other documentation prepared or developed pursuant to the Agreement, whether preliminary, final or otherwise. The Contractor shall deliver to the possession of the Department all work-in-progress documentation as it becomes available, but in no case longer than thirty (30) days after creation.

**17. FORCE MAJEURE**

Neither Party to the Agreement shall be liable or deemed to be in default for any delay or failure in performance under the Agreement resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, wars, riots, civil disturbances, insurrections, accident, fire, explosions, earthquakes, floods, the elements, acts or omissions of public utilities or strikes, work stoppages, slowdowns or other labor interruptions due to labor/management disputes involving entities other than the Parties to the Agreement, or any other causes not reasonably foreseeable or beyond the control of a Party. The Parties are required to use best efforts to eliminate or minimize the effect of such events during performance of the Agreement and to resume performance of the Agreement upon termination or cessation of such events.

**18. TIME OF THE ESSENCE**

The Department and the Contractor acknowledge and agree that time is of the essence for the Contractor's performance under the Agreement.

**19. RIGHTS AND REMEDIES**

The rights, duties and remedies set forth in the Agreement shall be in addition to, and not in limitation of, rights and obligations otherwise available at law.

**20. FEDERAL AND STATE COMPLIANCE**

The Contractor shall ensure that its employment practices comply with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended.

The Contractor shall ensure compliance with the Americans With Disabilities Act (42 USC §2101 et. seq.) such that programs and services provided during the course of performance of the Agreement shall be accessible under Title II of the Americans With Disabilities Act and as otherwise applicable under the Americans With Disabilities Act.

**21. TAXES**

It shall be understood that the Department, as an agency of the State of New York, is not liable for the payment of any sales, use, excise, or other form of tax however designated, levied or imposed, and shall agree to reimburse the Contractor for same only if taxes would have been incurred through the Department's normal business operations.

**22. INDEPENDENT CONTRACTOR**

The Parties agree that the Contractor is an independent contractor, and the Contractor, its officers, employees, agents, consultants and/or sub-contractors in the performance of the Agreement shall act in an independent capacity and not as agents, officers or employees of the State or the Department. Neither the Contractor nor any sub-contractor shall thereby be deemed an agent, officer, or employee of the State. The Contractor agrees, during the term of the Agreement, to maintain at the Contractor's expense those benefits to which its employees would otherwise be entitled by law, including health benefits, and all necessary insurance for its employees, including worker's compensation, disability and unemployment insurance, and to provide the Department with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, State, and local taxes, and all FICA contributions.

**23. NO THIRD PARTY BENEFICIARIES**

Nothing contained in the Agreement, expressed or implied, is intended to confer upon any person, corporation, other than the Parties hereto and their successors in interest and assigns, any rights or remedies under or by reason of the Agreement.

**24. HEADINGS OR CAPTIONS**

The headings or captions contained within the Agreement are intended solely for convenience and reference purposes and shall in no way be deemed to define, limit or describe the scope or intent of the Agreement or any provisions thereof.

**25. PARTIAL INVALIDITY**

Each Party agrees that it shall perform its obligations under the Agreement in accordance with all applicable federal and State laws, rules, and regulations, policies and/or guidelines now or hereafter in effect. If any term or provision of the Agreement shall be found to be illegal or unenforceable, then, notwithstanding such term or provision, the Agreement shall remain in full force and effect, and such term or provision shall be deemed stricken.

**26. CONFLICT OF INTEREST**

The Contractor shall ensure that its officers, employees, agents, consultants and/or sub-contractors comply with the requirements of the New York State Public Officers Law ("POL"), as amended, including but not limited to sections 73 and 74, as amended, with regard to ethical standards applicable to State employees, and particularly POL sections 73(8)(a)(i) and (ii) regarding post-employment restrictions affecting former State employees. Additionally, the Contractor shall ensure that no violation of these provisions will occur by reason of the Contractor's proposal for or negotiation and execution of the Agreement or in its delivery of services pursuant to the Agreement. If, during the term of the Agreement, the Contractor becomes aware of a relationship, actual or potential, which may be considered a violation of the POL or which may otherwise be considered a conflict of interest, the Contractor shall notify the Department in writing immediately. Should the Department thereafter determine that such employment is inconsistent with State law; the Department shall so advise the Contractor in writing, specifying its basis for so determining, and may require that the contractual or employment relationship be canceled. Failure to comply with these provisions may result in suspension or cancellation of the Agreement and criminal proceedings as may be required by law.



The Contractor is required to make full disclosure of any circumstances that could affect its ability to perform in complete compliance with the POL. Any questions as to the applicability of these provisions should be addressed by the Contractor to the New York State Ethics Commission, 540 Broadway, Albany, NY 12207 (518) 408-3976.

## **27. AUDIT AUTHORITY**

The Contractor acknowledges that the Department and the Office of the State Comptroller have the authority to conduct financial and performance audits of the Contractor's delivery of Program Services (or Project Services) in accordance with the Agreement and any applicable State and federal statutory and regulatory authorities. Such audit activity may include, but not necessarily be limited to, the review of documentary evidence to determine the accuracy and fairness of all items on the Contractor's submission of claims for payment under the Agreement, and the review of any and all activities relating to the Contractor's performance and administration of the Agreement.

The Contractor shall make available documentary evidence necessary to perform such reviews. Documentation made available by the Contractor may include, but is not limited to, source documents, books of account, subsidiary records and supporting work papers, claim documentation and pertinent contracts and correspondence.

The audit provisions contained herein shall in no way be construed to limit the audit authority or audit scope of the Office of the State Comptroller as set forth in Appendix A of the Agreement - Standards Clauses for All New York State Contracts.

## **28. CONFIDENTIALITY**

All records maintained by the Contractor and relating to the Agreement are confidential and shall be used by the Contractor and its officers, employees, and subcontractors or agents solely for the purpose of carrying out its obligations under the Agreement. Except as directed by a court of competent jurisdiction or as may be permitted or required by applicable New York State or federal law or regulations, no such records may be otherwise used or released to any person by the Contractor, its employees, subcontractors or agents, either during the term of the Agreement or in perpetuity thereafter. Deliberate or repeated accidental breach of this provision may, at the sole discretion of the Department, be grounds for termination of the Agreement.

The Contractor shall promptly advise the Department of all requests made to the Contractor for information regarding the performance of services under the Agreement, including any information provided by the Department, except as required by subcontractors or agents solely for the purpose of carrying out obligations under the Agreement or as required by law.

The Contractor shall be responsible for assuring that any agreement between the Contractor and any of its officers, agents and employees or applicable subcontractors contains a provision that conforms strictly to the provisions of this Article.

## **29. INFORMATION SECURITY REQUIREMENTS**

In accordance with the Information Security Breach and Notification Act (ISBNA) (General Business Law §889-aa, State Technology Law §208), Contractor shall be responsible for complying with provisions of the ISBNA and the following terms contained herein with respect to any private information (as defined in ISBNA) received by Contractor under the Agreement (Private Information) that is within the control of the Contractor either on the Department's information security systems or the Contractor's information security system (System). In the event of a breach of the security of the System (as defined by ISBNA),

Contractor shall immediately commence an investigation, in cooperation with the Department, to determine the scope of the breach and restore security of the System to prevent any further breaches. Contractor shall also notify the Department of any breach of the security of the System immediately following discovery of such breach.

Except as otherwise instructed by the Department, Contractor shall, to the fullest extent possible, first consult with and receive authorization from the Department prior to notifying any individuals, the State Office of Cyber Security and Critical Infrastructure Coordination (CSCIC), the State Consumer Protection Board and the Office of the Attorney General (OAG) or any consumer reporting agencies of a breach of the security of the System or concerning any determination to delay notification due to law enforcement investigations. Contractor shall be responsible for providing the notice to all such required recipients and for all the costs associated with providing such notice. Contractor shall be liable for any other costs associated with noncompliance of ISBNA if caused by the Contractor or Contractor's agents, officers, employees, or subcontractors. Nothing herein shall in any way impair the authority of the OAG to bring an action against the Contractor to enforce the provisions of ISBNA or limit Contractor's liability for any violation of the ISBNA. Additional information relative to the law and the notification process is available at: <http://www.cscic.state.ny.us/security/securitybreach>

Contemporaneous with the execution of the Agreement, the Contractor and its designees shall execute the Department's Third Party Connection and Data Exchange Agreement and any other protocol required by the Department, and shall ensure its employees, agents and designees complete the related Third Party Acceptable Use Policy and Agreement if applicable, to ensure the security of data transmissions and other information related to the administration of the Agreement. This request may be waived by the Department in its sole discretion.

**30. NONDISCLOSURE OF CONFIDENTIAL INFORMATION**

Except as may be required by applicable law or a court of competent jurisdiction, the Contractor, its officers, agents, employees, and subcontractors shall maintain strict confidence with respect to any Confidential Information to which the Contractor, its officers, agents, employees, and subcontractors have access in the course of the Contractor's performance under the Agreement. For purposes of the Agreement, all State information of which the Contractor, its officers, agents, employees and subcontractors becomes aware during the course of performing services for the Department shall be deemed to be Confidential Information (oral, visual or written). Notwithstanding the foregoing, information that falls into any of the following categories shall not be considered Confidential Information:

- (a) information that is previously rightfully known to the receiving party without restriction on disclosure;
- (b) information that becomes, from no act or failure to act on the part of the receiving party, generally known in the relevant industry or is in the public domain; and
- (c) information that is independently developed by the Contractor without use of confidential information of the State.

The Contractor shall hold the State and the Department harmless from any loss or damage to the State or the Department resulting from the disclosure by the Contractor, its officers, agents, employees, and subcontractors of such Confidential Information.

The Contractor shall provide for its officers, agents, employees, and subcontractors to acknowledge and execute a nondisclosure agreement containing substantially the terms described in this Article, if requested to do so by the Department or the State.

This representation shall survive termination of the Agreement.

**31. FREEDOM OF INFORMATION LAW**

Disclosure of information and material provided to the Department by the Contractor in the course of the Contractor's performance under the Agreement shall be permitted consistent with the laws of the State of New York, and specifically the Freedom of Information Law (FOIL), Article 6 of the Public Officers Law. The Department shall take reasonable steps to protect from public disclosure any of the records relating to the Contractor's performance under the Agreement that otherwise are exempt from disclosure under FOIL.

If the Contractor believes that any information or material provided to the Department constitutes trade secret information that should be exempted from FOIL disclosure, the Contractor must, at the time of the materials' submission, request the exemption in writing, specifically identifying the material by page number, line, or other appropriate designation, and provide a particularized explanation as to why the material constitutes trade secret information and how the disclosure of the identified information would cause substantial injury to the Contractor's competitive position. The material sought to be protected from disclosure must be clearly marked in yellow highlighter, on a duplicate copy of the submission and may be provided in hardcopy or on a CD. Generically marking all material as "Confidential" will not be considered adequate for the purpose of this Article.

The Department's receipt of the Contractor's submission of material and the Contractor's request for protection of the material from FOIL disclosure does not constitute a determination that the information is exempt from disclosure under FOIL. In the event any information or material is requested pursuant to FOIL, the Department will address each party's interests fully in accordance with the procedures required by Article 6 of the Public Officers Law.

**32. TERMINATION OF AGREEMENT**

In addition to any termination provisions specified elsewhere in the Agreement, the following provisions also shall apply:

The Agreement may be terminated by mutual written agreement of the Parties.

The Agreement may be terminated by the Department for cause upon the failure of the Contractor to comply with the terms and conditions of the Agreement, including any exhibits incorporated herein, provided that the Department shall give the Contractor written notice via registered or certified mail, return receipt requested, or hand delivery, such written notice to specify the Contractor's failure and the termination of the Agreement. Termination shall be effective ten (10) Business Days after receipt of such notice unless the Contractor, in the opinion of the Department, has cured such failure. The Contractor agrees to incur no new obligations nor to claim for any expenses made after receipt of the notification of termination. Upon termination for cause, the Department shall have the right to award a new contract to another contractor. Termination for cause shall create a liability upon the Contractor for actual damages incurred and for all reasonable additional costs incurred in reassigning the Agreement.

The Agreement may be terminated if the Department deems that termination would be in the best interest of the State provided that the Department shall give written notice to the Contractor not less than thirty (30) Days prior to the date upon which termination shall become effective, such notice to be made via registered or certified mail, return receipt requested or hand delivered. The date of such notice shall be deemed to be the date of postmark in the case of mail or the date of hand delivery.

The Agreement may be terminated immediately in the event the Department determines that funds are unavailable. The Department agrees to provide notice to the Contractor as soon as it becomes aware that funds are unavailable in the event of termination under this paragraph. If the initial notice is via oral notification, the Department shall provide written notice immediately thereafter. The Department shall be obligated to pay the Contractor only for the expenditures made and obligations incurred by the Contractor until such time as notice of termination or received either orally or in writing by the Contractor from the Department.

In the event of termination for any reason, the Contractor shall not incur new obligations for the terminated portion. The Contractor agrees, after consultation with the Department, to cancel such outstanding obligations as the Contractor deems appropriate in the exercise of sound business judgment.

Upon termination of the Agreement each Party shall, if applicable, return to the other all papers, materials, and other properties of the other Party held by each for purposes of performance under the Agreement. In addition, each Party shall assist the other Party in orderly termination of the Agreement and the transfer of all aspects hereof, tangible, and intangible, as may be necessary to ensure the orderly administration of the State program.

### **33. CONTRACTOR PERSONNEL**

The Contractor shall designate an Account Executive, who shall be the contact person for all matters arising under the Agreement.

The Contractor agrees to be solely responsible for the recruitment, hiring, provision of employment benefits, payment of salaries, and management of its personnel. These functions shall be carried out by the Contractor in accordance with the provisions of the Agreement and with all applicable federal and State laws and regulations.

The Contractor is required to commit key personnel for the administration of all aspects of the Agreement. In the event that any of the key personnel will be or are unavailable for the performance of their duties, the Contractor will designate and propose to the Department an equally qualified alternate with full authority to act for the unavailable key person.

The Contractor shall notify the Department in writing of any changes in the key personnel designated for performance of the Agreement. This shall include any changes in the personnel designated to bind the Contractor.

The Department reserves the right to demand the reassignment or cancellation of assignment to duties under the Agreement of any Contractor personnel so assigned. The Department shall not exercise the authority unreasonably. The Contractor agrees to replace any employees so reassigned or canceled with an employee of equal or better qualifications. If the Department exercises its right under this provision, it agrees to provide written notice to the Contractor setting forth its reasons with specificity.

### **34. OPERATIONAL CONTACTS**

The Contractor shall maintain appropriate corporate and/or legal authority, which shall include, but not be limited to, the maintenance of an organization capable of delivering Program Services in accordance with the Agreement and the authority to do business in the State of New York or any other governmental jurisdiction in which Program Services are to be delivered pursuant to the Agreement. The Contractor also shall maintain operations, financial and legal staff that shall be directly available to the Department's operations, financial and legal staff, respectively. For purposes of the Agreement, maintenance of such staff and staff availability by the Contractor shall in no way create any agency relationship between the Department and the Contractor.

The Contractor acknowledges and agrees that no aspect of the Contractor's performance under the Agreement is contingent upon Department personnel or the availability of Department resources, with the exception of all proposed actions of the Contractor specifically identified in the Agreement as requiring the Department approval. With respect to such approval, the Department shall act promptly and in good faith.

The Contractor must cooperate fully with any other contractors who may be engaged by the Department relative to the the Agreement.

The Contractor must ensure that all contacts by the Contractor personnel with other New York State agencies, external organizations (Federal Agencies, Unions, etc.) which result in any charge, cost or payment of any kind, must receive prior written authorization from the Department's Contract Manager.

### **35. SUBCONTRACTING**

If allowed in the solicitation instrument (e.g., Request for Proposal, Invitation for Bids, etc.) that results in the Agreement, the Contractor may arrange for specified portion(s) of its responsibilities under the Agreement to be subcontracted to a Key Subcontractor(s). A "Key Subcontractor" means that vendor(s) with whom the Contractor subcontracts to provide any portion of Program Services. If the Contractor determines to subcontract a portion(s) of Program Services, the Key Subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance under the Agreement must be fully explained by the Contractor to the Department. The Contractor retains ultimate responsibility for all Program Services performed under the Agreement.

All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of the Agreement including, but not be limited to, the body of the Agreement, Appendix A - Standard Clauses For All New York State Contracts, Appendix B - Standard Clauses for All Department Contracts and if applicable as determined by the Department, Appendix C - Third Party Connection and Data Exchange Agreement. Unless waived in writing by the Department, all subcontracts between the Contractor and a Key Subcontractor shall expressly name the State of New York, through the Department, as the sole intended third party beneficiary of such subcontract. The Department reserves the right to review and approve or reject any subcontract with a Key Subcontractor, as well as any amendments to said subcontract(s), and this right shall not make the Department or the State of New York a party to any subcontract or create any right, claim, or interest in the Key Subcontractor or proposed Key Subcontractor against the Department.

The Department reserves the right, at any time during the term of the Agreement, to verify that the written subcontract between the Contractor and Key Subcontractor(s) is in compliance with all of the provision of this Article and any subcontract provisions contained in the Agreement. In addition to other remedies allowed by law, the Department reserves the right to terminate the Agreement for cause if an executed subcontract does not contain all of the provisions/statements stipulated above. If during the term of the Agreement, any executed subcontract between the Contractor and a Key Subcontractor is amended, the Contractor shall, within 30 calendar days of such amendment, provide a copy to the Department.

The Contractor shall give the Department immediate notice in writing of the initiation of any legal action or suit which relates in any way to a subcontract with a Key Subcontractor or which may affect the performance of the Contractor's duties under the Agreement. Any subcontract shall not relieve the Contractor in any way of any responsibility, duty and/or obligation of the Agreement.

**36. PUBLICITY AND COMMUNICATIONS**

The Contractor shall ensure that all requests for the Contractor's participation in events where the Contractor will be participating on behalf of the Department receive prior written authorization from the Department.

No public discussion or news releases relating to the Agreement shall be made or authorized by the Contractor or the Contractor's agent without the prior written approval of the Department, which written approval shall not be unreasonably withheld or delayed provided, however, that Contractor shall be authorized to provide copies of the Agreement and answer any questions relating thereto to any State or federal regulators or, in connection with its financial activities, to financial institutions for any private or public offering.

**37. CONSULTANT DISCLOSURE REQUIREMENTS**

Unless directed otherwise by the Department, the Contractor shall demonstrate its compliance with Chapter 10 of the Laws of 2006 throughout the term of the Agreement by submitting to the Department and to the Office of the State Comptroller a "State Consultant Services - Contractor's Annual Employment Report" for each State Fiscal Year. Such report shall be due no later than May 15<sup>th</sup> of each year following the end of the State Fiscal Year being reported. Such report shall be required of any contract that includes services for analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health and mental health services, accounting, auditing, paralegal, legal, or similar services. Such report shall conform with Bulletin No. G-226 - Form B as issued by the Office of the State Comptroller. The report must be submitted to the Office of the State Comptroller, Bureau of Contracts, 110 State Street, 11<sup>th</sup> floor, Albany, NY 12236, ATTN: Consultant Reporting; and to the Department's Contract Manager.

**38. PROCUREMENT LOBBYING RESTRICTIONS UNDER STATE FINANCE LAW SECTIONS 139-j AND 139-k**

The Contractor certifies that all information that it has provided or will provide to the Department pursuant to State Finance Law sections 139-j and 139-k is complete, true, and accurate, including but not limited to information regarding prior determinations of non-responsibility within the past four years based upon (i) impermissible contacts of other violations of SFL section 139-j, or (ii) the intentional provision of false or incomplete information to a governmental entity.

The Department reserves the right to terminate the Agreement in the event it is found that the Contractor's certification of its compliance with SFL sections 139-j or 139-k was intentionally false or intentionally incomplete. Upon such finding, the Department may exercise its right to terminate the Agreement by providing written notification to the Contractor in accordance with Article 9 of this Appendix B.

**39. VENDOR RESPONSIBILITY**

The Contractor is required to provide the Department with an updated Vendor Responsibility Questionnaire when requested to do so by the Department throughout the term of the Agreement. Regardless, the Contractor is required to report to the Department any material changes in the information reported in its initial Vendor Responsibility Questionnaire.

**40. TAX LAW SECTION 5-A - CERTIFICATION REGARDING SALES AND COMPENSATING USE TAXES**

In the event the value of the Agreement exceeds \$100,000, the Contractor must file a properly completed Form ST-220-CA with the Department and a properly completed Form ST-220-TD with the Department of Taxation & Finance before the Agreement may take effect.

In addition, after the Agreement has taken effect, the Contractor must file a properly completed Form ST-220-CA with the Department if the Agreement's term is renewed; further, a new Form ST-220-TD must be filed with the Department of Taxation & Finance if no ST-220-TD has been filed by the Contractor or if a previously filed Form ST-220-TD is no longer correct and complete.

**41. CONTRACT PAYMENT**

Contractor shall provide complete and accurate billing invoices to the Department in order to receive payment. Billing invoices submitted to the Department must contain all information and supporting documentation required by the Agreement, the Department and the State Comptroller. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), by e-mail at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us), or by telephone at 518-474-4032. Contractor acknowledges that it will not receive payment on any invoices submitted under the Agreement if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

*May 2011*

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE  
THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT**

**THIS AGREEMENT** (the "Agreement") by and between the NYS Department of Civil Service ("DCS"), with principal offices in Albany, NY 12239, and

Excellus Health Plan, Inc.

with principal offices at

165 Court Street,
Rochester NY 14647


(hereinafter "Third Party"), is entered into as of the date last written below ("the Effective Date").

This Agreement consists of this signature page and the following attachments incorporated by reference:

1. Attachment 1: Third Party Connection and Data Exchange Agreement Terms and Conditions
2. Attachment 2: Third Party Connection and Data Exchange Request Requirements Document
3. Attachment 3: Third Party Acceptable Use Policy and Agreement
4. Attachment 4: DCS Equipment Loan Agreement (Applicable: Yes No )

This Agreement may only be modified by a written document executed by the parties hereto. Any disputes arising out of or in connection with this Agreement shall be governed by New York State law without regard to choice of law provisions.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed. Each party warrants and represents that its respective signatories whose signatures appear below have been and are on the date of signature duly authorized to execute this Agreement.

<i>Third Party Name:</i> Excellus Health Plan, Inc.	<i>NYS Department of Civil Service (DCS)</i>
<i>Authorized Signature</i> 	<i>Authorized Signature</i>
<i>Name (Print)</i> Nicholas Carbone	<i>Name (Print)</i>
<i>Date</i> 10/30/2015	<i>Date</i>



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**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE  
THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT  
ATTACHMENT 1 – SECURITY REQUIREMENTS**

**1. Right to Use Connection**

Third Party may only use the connection and the information obtained from DCS for business purposes as outlined by the Third Party Connection and Data Exchange Request Requirements Document (Attachment 2).

**2. Data Exchange**

2.1 Third Party may only use the data obtained for purposes outlined by the Third Party Connection and Data Exchange Request Requirements Document (Attachment 2) and the contract or Memoranda of Understanding, if any, that exists between DCS and Third Party for the provision of goods or services or governing conduct between DCS and Third Party with respect to the access to and use of DCS data.

2.2 Data exchange may be conducted only by methods and/or services outlined by the Third Party Connection and Data Exchange Request Requirements Document (Attachment 2). Third Party should expect that access to information and services may be limited, as determined or required by DCS.

**3. Network Security**

3.1 Third Party will allow only its own employees approved in advance by DCS ("Third Party Users") to access the Network Connection or any DCS-owned equipment. Third Party shall be solely responsible for ensuring that Third Party Users are not security risks, and upon DCS' request, Third Party will provide DCS with any information reasonably necessary for DCS to evaluate security issues relating to any Third Party User.

3.2 Third Party will promptly notify DCS whenever any Third Party User leaves Third Party's employ or no longer requires access to the connection or DCS-owned Equipment.

3.3 Each Party will be solely responsible for the selection, implementation, and maintenance of security procedures and policies that are sufficient to ensure that (a) such party's use of the connection (and Third Party's use of DCS-owned Equipment) is secure and is used only for authorized purposes, and (b) such Party's business records and data are protected against improper access, use, loss alteration or destruction.

3.4 The preferred connectivity method is via the Internet to a DCS-approved or DCS-provided Virtual Private Network (VPN) device. If the device is DCS-provided, DCS will loan the Third Party, in accordance with the DCS Equipment Loan Agreement, the required client software for establishing VPN connections with DCS. Normal DCS perimeter security measures will control access to the internal network.

3.5 Extranet – Designated routers are used in combination with firewall rules to allow access to be managed. A second authentication may be required.

- 3.6 Remote Access - Using the DCS-provided remote access software, Third Party will connect via an Internet browser. The account may be disabled until usage is required and controls are placed and managed by DCS. Third Party will be required to follow procedures to enable the account for each use.
- 3.7 Third Party Connections will be audited. All remote access user accounts for Third Parties will be given an expiration time. Renewals must be requested by Third Party and approved by the Department Sponsor. Obsolete Third Party connections will be terminated.
- 3.8 Software versions on all Third Party computers that connect to the DCS network must be versions that are currently supported by the software manufacturer, and all available security updates and hot fixes for that software must be applied in a timely fashion. Software and firmware for all Third Party networking equipment that is part of the connection to the DCS network must be kept up to date, especially with patches that fix security vulnerabilities.
- 3.9 Anti-virus software and firewalls must be installed and enabled at all times on DCS-owned computers and on Third Party computers that connect to the DCS network. Additionally, virus definition files must be kept up to date.
- 3.10 In no case may a Third Party Connection to DCS be used as an Internet Connection for Third Party or for a Third Party User.

**4. Notifications**

- 4.1 Third Party shall notify DCS in writing promptly of any change in its Users for the work performed over the Network Connection or whenever Third Party believes a change in the connection and/or functional requirements of the connection is necessary.
- 4.2 Any notices required by this Agreement shall be given in hand, sent by first class mail, or via facsimile to the applicable address set forth below.

Third Party Name: Excellus Health Plan, Inc.	NYS Department of Civil Service Albany, New York 12239
Address: 165 Court St Rochester NY, 14649 Fax: (585) 238-4348	Fax: (518) 473-3292
Attention: Nicholas Carbone	Attention: Linda Burk

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## 5. Citizen Notifications

If Third Party maintains "identifying personal information" on behalf of the Department and such information is compromised, Third Party shall notify the Department immediately that the information has been compromised, the circumstances under which the information was compromised, and the measures undertaken by Third Party to address those circumstances and to otherwise mitigate the effects of the compromise. If encrypted data is compromised along with the corresponding encryption key and encryption software, the data shall be considered unencrypted and the information will be considered compromised through unauthorized access. If the Department requests Third Party to do so, Third Party shall notify the persons whose identifying information was compromised. Such notification shall be communicated via postal service or email, as directed by the Department, and shall otherwise be executed in accordance with the Department's direction. Notification shall be delayed if a law enforcement agency determines that such notification may impede a criminal investigation. For the purpose of this section, "identifying personal information" shall be any information concerning an individual which, because of name, number, symbol, mark or other identifier in combination with any of the following, is unencrypted: (1) Social Security Number; or (2) driver's license number; or (3) financial account number, credit or debit card number, in combination with any required security code, access code, or password which would permit access to an individual's financial account; or (4) password which would permit access to the individual's account.

## 6. Payment of Costs

Each Party will be responsible for all costs incurred by that Party under this Agreement, including, without limitation, costs for phone charges, telecommunications equipment and personnel for maintaining the connection.

## 7. Confidentiality

- 7.1 Information exchanged for the business purposes outlined in Attachment 2 will be held confidential by the Parties to the maximum extent permitted by law. Each Party may internally use the information received from the other Party hereunder in connection with and as specifically necessary to accomplish the Business Purpose set forth in Attachment 2 and for no other purposes. Each Party may otherwise share such information with other third parties (e.g. consultants, subcontractors, control agencies) as required or permitted by law in order to effect the business purposes outlined in Attachment 2 and for no other purposes, provided that such third parties agree to the confidentiality restrictions set forth herein and as may be required otherwise by State and federal law.
- 7.2 Third Party must implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the sensitive information that it creates, receives, maintains, or transmits on behalf of DCS.
- 7.3 Unencrypted DCS information must not be transmitted over email.
- 7.4 Third Party must ensure that any agent, including a subcontractor, to whom it provides such information, agrees to implement reasonable and appropriate safeguards to protect it and report to the ITS Enterprise Service Desk any security incident of which it becomes aware.

## **8. Third Party Users**

- 8.1 Third Party must require that each Third Party User executes a Third Party Acceptable Use Policy and Agreement (Attachment 3). Third Party must ensure that DCS is notified by fax or mail when the user base changes, following the specifications in the Third Party Connection & Data Exchange Agreement.
- 8.2 All aspects of Third Party connections within DCS control may be monitored by the appropriate DCS support group and/or the DCS Information Security Officer. Any unauthorized use or change to devices will be investigated immediately.
- 8.3 All Third Party Connections will be reviewed on a regular basis and information regarding specific Third Party connection will be updated as necessary. Obsolete Third Party connections will be terminated.

## **9. DCS-owned Equipment**

- 9.1 DCS may, in DCS' sole discretion, loan to Third Party certain equipment and/or software for use on Third Party premises (the DCS-owned Equipment) under the terms of the DCS Equipment Loan Agreement set forth in Attachment 4. DCS-owned equipment will only be configured for TCP/IP, and will be used solely by Third Party on Third Party's premises or other locations authorized by DCS for the purposes set forth in this Agreement. DCS is responsible for ensuring that it has the right under applicable software licenses to permit third party use.
- 9.2 Third Party may modify the configuration of the DCS-owned equipment only after notification and approval in writing by authorized DCS personnel.
- 9.3 Third Party will not change or delete any passwords set on DCS-owned equipment without prior approval by authorized DCS personnel. Promptly upon any such change, Third Party shall provide DCS with such changed password.

## **10. Term, Termination and Survival**

- 10.1 This Agreement will remain in effect until terminated by either Party, but in no event prior to the termination or expiration of any contract or agreement between the Parties for the purchase of goods or services that provides the business purpose for the exchange of data between the Parties, unless both Parties mutually agree to so terminate this Agreement.
- 10.2 Upon termination, Third Party shall return all tangible DCS data to DCS within a timeframe specified by DCS for that purpose, and further shall certify in writing to DCS that all other DCS data in whatever form has been destroyed. Additionally, any DCS-owned equipment and/or software shall be promptly returned to DCS at Third Party's expense.
- 10.3 Notwithstanding the above, the Parties' obligations to safeguard the confidentiality of the data subject to this Agreement shall survive the termination of this Agreement, and shall bind the Parties' employees, subcontractors, agents, heirs, successors and assigns.

**11. Severability**

If for any reason a court of competent jurisdiction finds any provision or portion of this Agreement to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to affect the intent of the Parties, and the remainder of this Agreement will continue in full force and effect.

**12. Waiver**

The failure of any Party to enforce any of the provisions of this Agreement will not be construed to be a waiver of the right of such Party thereafter to enforce such provisions.

**13. Assignment**

Third Party may not assign this Agreement, in whole or in part, without the prior written consent from DCS. Any attempt to assign this Agreement, without such consent, will be null and of no effect. Subject to the foregoing, this Agreement is for the benefit of and will be binding upon the parties' respective successors and permitted assigns.

**14. Force Majeure**

Neither Party will be liable for any failure to perform its obligations if such failure results from any act of God or other cause beyond such Party's reasonable control (including, without limitation, any mechanical, electronic or communications failure) which prevents such party from transmitting or receiving any data.

**15. Partial Invalidity**

If this Agreement is entered into as a consequence of Third Party's provision of goods or services to DCS pursuant to a contract or other written agreement, that Agreement supersedes this Agreement to the extent the agreements' provisions may be inconsistent.

July 2005

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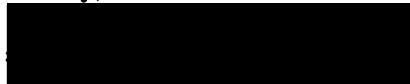
**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE  
THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT  
ATTACHMENT 2 – REQUEST REQUIREMENTS**

In accordance with the DCS *Third Party Connection and Data Exchange Policy*, all requests for Third Party connections and data exchanges must be accompanied by this completed requirements document. This document should be completed by the DCS person or group requesting the Third Party connection and/or data exchange. The DCS Department Sponsor must be the Director of the Division whose business requires the Third Party connection and/or data exchange. DCS Divisions are encouraged to work with their IRM Liaison to complete the information in this document.

***Part 1 – Business Justification***

**A. DCS Sponsor (Division Director)**

David Boland  
Employee Benefits Division  
NYS Department of Civil Service  
Albany, New York 12239



Back-up Point of Contact: *(Data Custodian)*  
Barbara Vaughn  
Employee Benefits Division  
NYS Department of Civil Service  
Albany, New York 12239



**B. Business Reason for Connection (To be completed by Sponsor)**

State the purpose of establishing the connection and the purpose of the data transmission. Specify the business needs of the proposed connection. Use additional sheets of paper if needed.

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**C. Specify the details of the work to be accomplished via the connection. What applications will be used? What information will be used? What transactions will be accomplished?**

Enrollment files from NYBEAS will be transmitted to *Excellus Health Plan, Inc.* via an SFTP connection. Limited *Excellus Health Plan, Inc.* staff has inquiry access to NYBEAS to verify NYSHIP enrollment in *Excellus Health Plan, Inc.* The enrollment information is used by *Excellus Health Plan, Inc.* to determine eligibility for benefits under the NYSHIP and to provide benefits to enrolled members

**D. Specify the Third Party Controls to be Implemented for Safeguarding DCS Data:**

**Access Controls:**

Limited access, network log-on, userid and password by team manager, trainers, quality assurance and front-line supervisors. Access will not be granted to general population.

**Audit Controls:**

Limited access, network log-on, userid and password by team manager, trainers, quality assurance and front-line supervisors. Access will not be granted to general population.

**Working procedures or practices for handling printed material and verbal exchanges:**

Process is in place for all associates regarding when NYBEAS can be accessed.

**Method of Disposal of media and paper:**

Excellus contracts with a vendor to manage the pickup and destruction of sensitive data that's on either paper or media

Secure receptacles are used to dispose of sensitive material.

Secure receptacles are located on every floor and are used to dispose sensitive information (PHI) that is either on media or on hard copy

**Physical Security:**

Excellus has implemented physical security controls to protect member's information, These controls include the use of security cards for workforce members, card readers at physical entryways, sign in sheets and security guards. A workforce member's security card will be coded to assign access only to those areas which are required for their responsibilities. The Data Center, where the member data resides, has an additional layer of physical security, with limited access to specific employees.

**Other:**

Enrollment files that are transmitted to Excellus BCBS from the Department via FTP will be encrypted using PGP. Excellus BCBS should also use PGP encryption on any files sent to the Department.

**E. Estimated number of hours of use each week?**

- 1 – 20                       21 – 40                       More than 40 hours per week

**F. Anticipated normal hours of use?**

- M – F, 8:00 – 5:00 pm Eastern Time                       Other (specify):

**G. What is the requested installation date? (Minimum lead-time is 30 days)**

**H. Approximately how long will the connection be needed?**

- Up to 6 months                       6 – 12 months                       More than 12 months  
 Specific time period: Length of Contract

**Note: If a connection is needed for more than a year, the Connection Agreement must be renewed annually.**

**I. Other useful information**

**J. Third Party Information**

Name of Third Party:      Excellus BCBS  
Main Phone Number:      [REDACTED]  
Main Office Address:      165 Court St

Management Contact

Name:      Nick Carbone  
Address:      165 Court Street Rochester 14647  
Email Address:      [REDACTED]  
Phone Number:      [REDACTED]  
Manager's Name: Teresa Northrup  
Manager's Phone:      [REDACTED]

Backup Contact

Name: Mary Ann Neuwirth  
Address: 165 Court Street Rochester 14647  
Email Address: [REDACTED]  
Phone Number: [REDACTED]  
Manager's Name: Nick Carbone

Technical Contact

Name:  
Department:  
Address:  
Email Address:  
Phone Number:  
Manager's Name:



Manager's Phone:

Domain name(s):

Technical Support Hours:

Host name(s):

Escalation List:

Manager's Phone: 

**User Names and Contact Information.** *(List all employees of the Third Party who will use this access.)*

User 1 *(name, phone, email):*

Keith Bower [REDACTED]

User 2 *(name, phone, email):*

Angie Mesmer [REDACTED]

User 3 *(name, phone, email):*

Bonnie Vasquez [REDACTED]

User 4 *(name, phone, email):*

Sarah Williams [REDACTED]

User 5 *(name, phone, email):*

User 6 *(name, phone, email):*

User 7 *(name, phone, email):*

User 8 *(name, phone, email):*

User 9 *(name, phone, email):*

User 10 *(name, phone, email):*

**K. Other information**

*July 2005*

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**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE**
**THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT**
**ATTACHMENT 3 – THIRD PARTY ACCEPTABLE USE POLICY AND AGREEMENT**

This Policy and Agreement applies to all forms of computer and networking use, including local access at the Department of Civil Service (DCS) premises, remote access via public or private networks, access using DCS equipment, access using individual or group accounts, and access via other methods.

A signed paper copy of this form must be submitted by any individual (1) for whom authorization of a new user account is requested, (2) who will use a shared third party account, and/or (3) who is requesting reauthorization of an existing use. Modifications to the terms and conditions of this agreement will not be accepted by DCS management.

Indicate here if this is a notification that the User named below no longer requires access:

User's Name ( <i>print</i> ):			
Organization:			
Telephone Number:	Area Code:	Number:	Extension:
Office Address:			
<b><i>The undersigned acknowledges that he or she has read, understands, and agrees to comply with this Third Party Acceptable Use Policy and Agreement governing the use of DCS computing resources.</i></b>			
User Signature:		Date:	

**You must sign this signature page and send it to DCS. Retain a copy of the signature page and the attached Policy for your records. This form must be delivered either by fax/ mail to: NYS Department of Civil Service, Albany, NY 12239, 518-485-5590, Attention: Carol Hanes.**

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**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE**  
**THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT**  
**ATTACHMENT 3 – THIRD PARTY ACCEPTABLE USE POLICY AND AGREEMENT**

**I. Protection of DCS Information**

All records and information maintained in DCS systems accessed by the User are confidential and shall be used by the User solely for the purpose of carrying out the User's official duties. Users may not use any such records and information for any other purpose. No such records or information may otherwise be used or released to any person by the User or by the User's employer or agent, except as may be required by applicable State or federal law or by a court of competent jurisdiction. All accounts and connections will be regularly reviewed.

**II. DCS Log-on Banner**

All users will follow the guidelines of the DCS Log-on Banner as stated below.

NOTICE \* The contents of this banner have been recommended to all State agencies by the Office for Technology in the NYS Preferred Standards and Procedures for Information Security. \* This electronic system, which includes hardware, software and network components and all data contained therein (the "system"), is the property of the New York State Department of Civil Service (DCS). \* Unauthorized use or attempted unauthorized use of this system is not permitted and may constitute a federal or state crime. Such use may subject you to appropriate disciplinary and/or criminal action. Use of this system is only permitted to the extent authorized by DCS. \* Use is limited to conducting official business of DCS. Under the Electronic Communications Privacy Act of 1986 (18 U.S.C. 2510, et seq.), notice is hereby given that there are NO facilities provided by this system for sending or receiving private confidential electronic communication. Any use, whether authorized or not, may be monitored, intercepted, recorded, read, copied, accessed or captured in any manner, and used or disclosed in any manner, by authorized DCS personnel without additional prior notice to users. In this regard, users have no legitimate expectation of privacy during any use of this system or in any data on this system. \* Use, whether authorized or unauthorized, constitutes expressed consent for DCS to monitor, intercept, record, read, copy, access or capture and use or disclose such information. \* DCS policy regarding this matter can be reviewed on the DCS internal website. Copies can also be obtained from the Office of Human Resources Management. Such policies are subject to revision. This notice is consistent with the Acceptable Use Policy issued to DCS employees regarding acceptable use, June 15, 2005. I have read and understand this notification and department policy.

**III. Passwords**

The User is not permitted to share his/her password with anyone. Passwords must never be written down. The User must not use the same password for multiple applications. The User must use passwords that are not easily guessed and must not use their email address as their password.

#### **IV. Shared Accounts**

All use of shared accounts must be authorized by DCS. Users of shared accounts must be identified to DCS via the completion and signing of this policy/agreement. Third Parties are responsible for notification to DCS when the user base changes. Passwords for shared accounts must not be provided to individuals who have not been identified by Third Party to DCS and who have not completed and signed this policy/agreement.

#### **V. Virus Protection**

Anti-virus software must be installed and enabled at all times on DCS-owned computers and on third party computers used to conduct DCS business. Virus definition files must be kept up to date. DCS Information Resource Management (IRM) provides anti-virus software and maintains the configuration of that software for all DCS-owned computers.

#### **VI. Acceptable Use**

DCS computers, computing systems and their associated communication systems are provided to support the official business of DCS. All uses inconsistent with DCS' business activities and administrative objectives are considered to be inappropriate use.

Examples of unacceptable behavior include, but are not limited to the following.

- Any illegal activities that could result in legal actions against and/or financial damage to DCS.
- Computer usage that reasonably harasses or offends other employees, users, or outsiders, or results in public embarrassment to DCS.
- Computer usage that is not specifically approved and which consumes significant amounts of computer resources not commensurate with its benefit to DCS' mission or which interferes with the performance of a worker's assigned job responsibilities.
- Use in connection with compensated outside work or unauthorized not-for-profit business activities.
- Use of sniffers, spyware, ad-ware or other related technology.

#### **VII. Software Protection**

The User is responsible for complying with copyright, licensing, trademark protection, and fair use restrictions.

#### **VIII. Reporting Incidents**

Users are required to report incidents of system errors, data discrepancies, application performance problems, to the DCS Help Desk, at 518-457-5406 phone; 518-485-5588 fax.

**IX. DCS Rights**

Pursuant to the Electronic Communications Privacy Act of 1986 (18 USC 2510 et seq.), notice is hereby given that there are no facilities provided by this system for sending or receiving private or confidential electronic communications. DCS has access to all access attempts, messages created and received, and information created or stored using DCS resources, and will monitor use as necessary to assure efficient performance and appropriate use. Information relating to or in support of illegal activities will be reported to the appropriate authorities.

DCS reserves the right to log and monitor use. DCS reserves the right to remove a user account from the network. DCS assumes no responsibility or liability for files or information deleted.

The DCS will not be responsible for any damages. This includes the loss of data resulting from delays, non-deliveries, or service interruptions caused by negligence, errors or omissions, or caused by the way the user chooses to use DCS computing facilities.

DCS reserves the right to change its policies and rules at any time.

**X. Penalties**

The User shall hold the State and DCS harmless from any loss or damage to the State and/or DCS resulting from the User's inappropriate disclosure of information covered by this User Agreement. Further, the User's non-compliance with this Agreement may result in the revocation of system privileges, termination of employment or contract with DCS, and/or criminal and/or civil penalties.

*July 2005*

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE  
THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT  
ATTACHMENT 4 – EQUIPMENT LOAN AGREEMENT**

Name And Address Of Borrower		DCS Business Unit (Loaning Organization)	
		Point Of Contact	
		Work Location	Telephone
Shipping Address (If different from borrower's)		Manager's Name	
		Date To Be Loaned	
		Date To Be Returned	
<b>Equipment To Be Loaned</b>			
Quantity	Description	Value	
Purpose Of Loan			
<b>CONDITIONS OF LOAN</b>			
<ol style="list-style-type: none"> <li>1. The Borrower of the above equipment agrees to return same in like condition as received from DCS, normal wear and tear excepted, on or before the above return date, unless the loan period is formally extended.</li> <li>2. Upon termination of this Agreement, Borrower shall uninstall all DCS software included in this Agreement from Borrower's computer and/or network equipment.</li> <li>3. The Borrower shall not make <b>any</b> copies of DCS software included in this Agreement.</li> <li>4. In case of loss or damage beyond repair, DCS shall be reimbursed by Borrower at the current price of replacement.</li> <li>5. The equipment shall not be loaned or transferred to a third party without the written consent of DCS.</li> <li>6. The right is reserved to cancel the loan or recall the equipment upon _____ days' notice.</li> <li>7. The Borrower shall assume all shipping and/or transportation costs involved.</li> <li>8. Other conditions:</li> </ol>			

<b>Agreed (Borrower)</b>	<b>Approved (DCS)</b>
Borrowing Organization	Loaning Organization
Signature Of Authorized Official	Signature Of Authorized Official
Title	Title
Date	Date
<b>RECEIPT OF EQUIPMENT</b>	
<b>Borrower (Upon initial receipt)</b>	<b>DCS Lender (Upon termination of Agreement)</b>
Borrowing Organization	Loaning Organization
Signature Of Authorized Official	Signature Of Authorized Official
Title	Title
Date	Date

July 2005



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**PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES**

**I. General Provisions**

- A. The Department of Civil Service is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State Department of Civil Service (the “Department”), to fully comply and cooperate with the Department in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for certified minority and women-owned business enterprises (“MWBEs”). The Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

**II. Contract Goals**

- A. For purposes of this procurement, the Department hereby establishes an overall goal of 30% for Minority and Women-Owned Business Enterprises (“MWBE”) participation, 15% for New York State certified minority-owned business enterprises (“MBE”) participation and 15% for New York State certified women-owned business enterprises (“WBE”) participation (collectively, “MWBE Contract Goals”) based on the current availability of qualified MBEs and WBEs.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section II-A hereof, the Contractor should reference the directory of New York State Certified MBWEs found at the following internet address: <https://ny.newnycontracts.com>.

Additionally, the Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. Where MWBE Contract Goals have been established herein, pursuant to 5 NYCRR §142.8, the Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the Department for liquidated or other appropriate damages, as set forth herein.

### **III. Equal Employment Opportunity (EEO)**

- A. The Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the “Division”). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. The Contractor shall comply with the following provisions of Article 15-A:
  - 1. Contractor and subcontractor performing work on the Contract (“Subcontractor”) shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
  - 2. The Contractor shall submit an EEO policy statement to the Department within seventy two (72) hours after the date of the notice by the Department to award the Contract to the Contractor.
  - 3. If the Contractor or Subcontractor does not have an existing EEO policy statement, the Department may provide the Contractor or Subcontractor a model statement (see Appendix D-1 – Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).
  - 4. The Contractor’s EEO policy statement shall include the following language:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
- b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the 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.
- c. 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.
- d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each Subcontractor as to work in connection with the Contract.

C. Form EEO-100 - Staffing Plan

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The Contractor shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

D. Form MWBE-100 - Workforce Employment Utilization Report ("Workforce Report")

1. Once a contract has been awarded and during the term of Contract, the Contractor is responsible for updating and providing notice to the Department of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories

listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.

2. Separate forms shall be completed by Contractor and any Subcontractor.
  3. In limited instances, the Contractor may not be able to separate out the workforce utilized in the performance of the Contract from the Contractor's and/or Subcontractor's total workforce. When a separation can be made, the Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from the Contractor's and/or Subcontractor's total workforce, the Contractor shall submit the Workforce Report and indicate that the information provided is the Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.
- E. The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and Subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

#### **IV MWBE Utilization Plan**

- A. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan, by submitting evidence thereof through the New York State Contract System ("NYSCS"), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that the Contractor may arrange to provide such evidence via a non-electronic method to the Department, either prior to, or at the time of, the execution of the contract.
- B. The Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.
- C. The Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the Department shall be entitled to any remedy provided herein, including but not limited to, a finding of the Contractor non-responsiveness.

#### **V. Waivers**

- A. For Waiver Requests, the Contractor should use the NYSCS, provided, however, that Bidder may arrange to provide such evidence via a non-electronic method to the Department.
- B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the Department shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If the Department, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals and no waiver has been issued in regards to such non-compliance, the Department may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

#### **VI Quarterly MWBE Contractor Compliance Report**

The Contractor is required to submit a Quarterly MWBE Contractor Compliance Report through the NYSCS, provided, however, that Bidder may arrange to provide such evidence via a non-electronic method to the Department by the 10<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

#### **VII Liquidated Damages - MWBE Participation**

- A. Where the Department determines that the Contractor is not in compliance with the requirements of the Contract and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to the Department liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
  - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
  - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the Department, the Contractor shall pay such liquidated damages to the Department within sixty (60) days after they are assessed by the Department unless prior to the

expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the Department.

**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL  
EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

**M/WBE AND EEO POLICY STATEMENT**

I, Excelsus Health Plan, Inc. the (awardee/contractor) **Excelsus Health Plan, Inc.** agree to adopt the following policies with respect to the project being developed or services rendered at the New York State Department of Civil Service.



This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from the Department and solicit bids from them directly.
- (3) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (4) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. The Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (5) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.



(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.

(b) This organization shall state in all solicitation 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 disability or marital status.

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized 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 this organization's obligations herein.

(d) The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic

## **Exhibit I.Q – M/WBE and EEO Policy Statement**

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characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract



**Exhibit I.Q – M/WBE and EEO Policy Statement**

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Agreed to this 2<sup>nd</sup> day of November, 2015

By [Redacted]

Print: John Babocsi Title: VP, Finance

\_\_\_\_\_ is designated as the Minority Business Enterprise Liaison  
(Name of Designated Liaison)  
responsible for administering the Minority and Women-Owned Business Enterprises- Equal  
Employment Opportunity (M/WBE-EEO) program.

(1) Ensure that plans, specifications, request for proposals and other documents used to  
secure bids will be made available in sufficient time for review by prospective M/WBEs.

**M/WBE Contract Goals**

- 5 % Minority and Women's Business Enterprise Participation
- 2 % Minority Business Enterprise Participation
- 3 % Women's Business Enterprise Participation

**EEO Contract Goals**

- % Minority Labor Force Participation
- % Female Labor Force Participation

\_\_\_\_\_  
(Authorized Representative)

Title: \_\_\_\_\_

Date: \_\_\_\_\_



Division of Minority  
and Women's  
Business Development

## Your MWBE Utilization and Reporting Responsibilities Under Article 15-A

The New York State Contract System (“NYSCS”) is your one stop tool compliance with New York State’s MWBE Program. It is also the platform New York State uses to monitor state contracts and MWBE participation.


### GETTING STARTED

To access the system, you will need to login or create a user name and password at <https://ny.newnycontracts.com>. If you are uncertain whether you already have an account set up or still need to register, please send an email to the customer service contact listed on the Contact Us & Support page, or reach out to your contract’s project manager. For verification, in the email, include your business name and contact information.

### VENDOR RESPONSIBILITIES

As a vendor conducting business with New York State, you have a responsibility to utilize minority- and/or women-owned businesses in the execution of your contracts, per the MWBE percentage goals stated in your solicitation, incentive proposal or contract documents. NYSCS is the tool that New York State uses to monitor MWBE participation in state contracting. Through the NYSCS you will submit utilization plans, request subcontractors, record payments to subcontractors, and communicate with your project manager throughout the life of your awarded contracts.

There are several reference materials available to assist you in this process, but to access them, you need to first be registered within the NYSCS. Once you log onto the website, click on the **Help & Support** >> link on the lower left hand corner of the Menu Bar to find recorded trainings and manuals on

all features of the NYSCS. You may also click on the  icon at the top right of your screen to find videos tailored to primes and subcontractors. There are also opportunities available to join live trainings, read up on the “Knowledge Base” through the Forum link, and submit feedback to help improve future enhancements to the system. Technical assistance is always available through the **Contact Us & Support** link on the NYSCS website (<https://ny.newnycontracts.com>).

For more information, contact your project manager.

**Exhibit I.D – MacBride and Non-Collusive Bidding Certification****NON-DISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND**  
**MACBRIDE FAIR EMPLOYMENT PRINCIPLES**

In accordance with Chapter 807 of the Laws of 1992 the Offeror, by submission of this bid, certifies that it or any individual or legal entity in which the Offeror holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership interest in the Offeror, either (answer "yes" or "no" to one or both of the following, as applicable):

Have business operations in Northern Ireland. Yes \_\_\_\_\_ or No  \_\_\_\_\_

If yes:

Shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of their compliance with such Principles. Yes \_\_\_\_\_ or No \_\_\_\_\_

**NON-COLLUSIVE BIDDING CERTIFICATION**

By submission of this bid, each Offeror and each person signing on behalf of any Offeror certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

1. The prices in this bid have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other Offeror or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Offeror and will not knowingly be disclosed by the Offeror prior to opening, directly or indirectly, to any other Offeror or to any competitor; and
3. No attempt has been made or will be made by the Offeror to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

Exhibit I.D – MacBride and Non-Collusive Bidding Certification

Date: 6/3/15

[Redacted Signature]  
Signature

PRINT:

SIGNATORY'S NAME Mary Bowe

TITLE Regional Vice President of Sales

**INDIVIDUAL, CORPORATE OR PARTNERSHIP ACKNOWLEDGMENT**

STATE OF New York }

: ss.:

COUNTY OF Monroe }

On the 3<sup>rd</sup> day of June in the year 2015, before me personally appeared:

Mary Bowe, known to me to be the person who executed the foregoing

instrument, who, being duly sworn by me did depose and say that She resides at [Redacted], Town of

[Redacted], County of [Redacted], State of New York;

and further that, if applicable:

[Check One, If Applicable]

(  If a corporation): he is the REGIONAL VP SALES of Excelsus Health Plan, Inc., the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

(  If a partnership): he is the \_\_\_\_\_ of \_\_\_\_\_ the partnership described in said instrument; that, by the terms of said partnership, he is authorized to execute the foregoing instrument on behalf of the partnership for the purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name and on behalf of said partnership as the act and deed of said partnership.

LISA M. SANTELLI

Notary Public in the State of New York  
Monroe County  
Commission Expires Dec. 26, 20 18

[Redacted Notary Signature]  
Notary Public

**2016 -2020 HMO Contract**

**Placeholder for Exhibit B and B-1**

**Exhibit B:** 2016 HMO Specifications for the New York State Health Insurance Program (NYSHIP) and Amendments, dated April 23, 2015; and **Exhibit B-1:** official Department response to questions raised concerning the 2016 HMO Specifications, dated May 21, 2015.

**2016 -2020 HMO Contract**

**Placeholder for Exhibit C and C-1**

**Exhibit C:** Contractor's Proposal; and **Exhibit C-1:** Written responses to Clarifying Questions regarding Contractor's Proposal.