NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

# AGREEMENT #C000488

between

# NEW YORK STATE
# DEPARTMENT OF CIVIL SERVICE

and

# MedAmerica Insurance Company
# of New York

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**AGREEMENT NO. C000488**

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE**
**and**
**MEDAMERICA INSURANCE COMPANY OF NEW YORK**

THIS Agreement, effective May 1, 2001, is entered into by and between the New York State Department of Civil Service ("Department" or DCS"), having its principal office at Agency Building 1, State Campus, Albany, New York 12239, and MedAmerica Insurance Company of New York, a New York corporation authorized to do business in the State of New York with a principal place of business located at 165 Court Street, Rochester, New York 14647 ("Insurer"), and collectively referred to as "the Parties".

## WITNESSETH

**WHEREAS,** Chapter 585 of the Laws of 1998 amended the Civil Service Law by adding Article XI-A, which requires the New York State Department of Civil Service to establish a long term care insurance plan for the benefit of State employees, retirees, and their dependents, and for the benefit of Participating Employers' employees, retirees, and their dependents; and

**WHEREAS,** Article XI-A requires the Department to purchase a contract or contracts to provide long term care benefits under the long term care insurance plan; and

**WHEREAS,** on April 7, 2000, the Department of Civil Service issued a Request for Proposal ("RFP") entitled "The Long Term Care Insurance Program" to secure the services of a qualified organization to provide long term care insurance services; and

**WHEREAS,** after thorough review and evaluation by the Department, the Governor's Office of Employee Relations, and the New York State Insurance Department of proposals received in response to the RFP, the Insurer's proposal was selected as representing the best value to the State; and

**WHEREAS,** the Department, in reliance upon the expertise of the Insurer, desires to engage the Insurer to perform the Long Term Care Insurance services in the manner set forth in the Proposal and under the terms and conditions set forth in this Agreement;

**THEREFORE,** the Parties agree as follows:

## ARTICLE I. DEFINITION OF TERMS

***Applicant*** means a person who applies for coverage under NYPERL.

***Business Day(s)*** means every Monday through Friday, except for days designated as business holidays by the Insurer and approved as such by DCS prior to January 1 of each calendar year.

***Business Hours*** means 8:30 A.M. until 5:00 P.M., unless different hours are agreed upon between the Parties.

***Calendar Year/Annual*** means a period of 12 months beginning with January 1 and ending with December 31.

***Certificate(s)*** means the Certificate(s) of Insurance issued to Enrollees by the Insurer. The Certificate includes any certificate riders and certificate supplements.

***Day(s)*** means calendar days unless otherwise noted.

***DCS or Department*** means the New York State Department of Civil Service.

***Dependent*** means the spouses, domestic partners, dependent children 18 years or older, parents, and parents-in-law of employees and retirees eligible to participate in the Plan.

***Dependent Survivor*** means any person defined as a Dependent Survivor as defined in 4 NYCRR Part 77, as amended.

***Employee*** means any person defined as an Employee as defined in 4 NYCRR Part 77, as amended.

***Enrollee*** means the same as "Insured."

***EST*** means Eastern Standard Time with the understanding that, during that time of the year when Daylight Savings Time (DST) is in effect, EST shall be replaced by DST.

***Insured*** means any person enrolled in NYPERL pursuant to the terms of 4 NYCRR Part 77, as amended.

***Insurer or Contractor*** means the entity selected in response to the Request for Proposals dated April 7, 2000, entitled "The Long Term Care Insurance Program."

***NYPERL*** means the New York State Public Employee and Retiree Long Term Care Insurance Plan.

***NYPERL Services*** means the long term care insurance and/or administrative services to be provided by the Insurer as set forth in the Agreement.

***NYS*** means New York State.

***Participating Agency*** means a county or city having a population of less than one million inhabitants; town, village or any other entity operating a public school, college or university; or a public improvement or special district which elects, with the approval of the President of the Civil Service Commission, to participate in NYPERL.

***Participating Employer*** means a public authority, commission, or public benefit corporation or any other public corporation, agency or instrumentality or unit of government which exercises governmental powers under the laws of this State and which elects, with the approval of the President of the Civil Service Commission, to participate in NYPERL.

***President*** means the President of the Civil Service Commission and the Commissioner of the DCS.

***Proposal*** means both the Technical Proposal and Cost Proposal submitted by the Insurer in response to the RFP.

***Regulations of the President of the New York State Civil Service Commission*** means those regulations promulgated by the President of the Civil Service Commission under the authority of Civil Service Law, Article XI-A, as amended, and including, but not limited to, those regulations to be promulgated as 4 New York Code of Rules and Regulations (NYCRR) Part 77.

***Retiree*** means any person defined as a Retiree pursuant to the terms of 4 NYCRR Part 77, as amended.

***RFP*** means the Request for Proposal entitled "The Long Term Care Insurance Program", dated April 7, 2000, Exhibit B to this Agreement.

***State*** means the State of New York.

***Vestee*** means any person defined as a Vestee pursuant to the terms of 4 NYCRR Part 77, as amended.

**ARTICLE II. INTEGRATION**

**2.1.0** 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.

**2.2.0** All statements made by the DCS or insured persons shall be deemed to be representations and not warranties.

**ARTICLE III. AGREEMENT DURATION AND AMENDMENTS**

**3.1.0** This Agreement is for the period starting May 1, 2001, through and including April 30, 2011, unless extended by consent of the Department subject to approval by the Office of the State Comptroller, and subject to the termination provisions contained herein.

**3.2.0** The Agreement is subject to amendment(s) only upon mutual consent of the Parties, reduced to writing and approved by the Office of the State Comptroller of the State of New York.

**ARTICLE IV. DOCUMENT INCORPORATION AND ORDER OF PRECEDENCE**

**4.1.0** The Agreement consists of:

**4.1.1** The body of the Agreement (that portion preceding the signatures of the Parties in execution), and any amendments thereto;

**4.1.2** The following Exhibits attached and incorporated by reference to the body of the Agreement:

**4.1.2.a** Exhibit A, which includes: Appendix A - Standard Clauses for all New York State Contracts; the Omnibus Procurement Act of 1992 Statement; and the MacBride Act Statement;

**4.1.2.b** Exhibit B: the Request for Proposal entitled, "The Long Term Care Insurance Program," dated April 7, 2000, and the official DCS response to questions raised concerning the RFP, dated April 27, 2000 (Exhibit B.1);

**4.1.2.c** Exhibit C: the Insurer's Proposal, dated June 22, 2000; with the official transcript of the Management Interview dated August 24, 2000 (Exhibit C.1), and related correspondence dated August 31, 2000, October 17, 2000, and October 25, 2000 (Exhibit C.2);

**4.1.2.d** Exhibit D: the Group Policy(ies) and Certificate(s) of Insurance; and

**4.1.2.e** Exhibit E: Schedule of Premium Rates.

**4.2.0** In the event of any inconsistency in, or conflict among, the document elements of the Agreement identified in 4.1.0 above, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the following order:

**4.2.1** First, Exhibit A;

**4.2.2** Second, any Amendments to the body of the Agreement;

**4.2.3** Third, the body of the Agreement;

**4.2.4** Fourth, Exhibit B, the Request for Proposal entitled "The Long Term Care Insurance Program," dated April 7, 2000, and the official DCS response to questions raised concerning the RFP, dated April 27, 2000 (Exhibit B.1)

**4.2.5** Fifth, Exhibit C, the Insurer's Proposal, dated June 22, 2000, with the official transcript of the Management Interview dated August 24, 2000 (Exhibit C.1), and follow up correspondence dated August 31, 2000, October 17, 2000, and October 25, 2000, related thereto (Exhibit C.2).

**4.2.6** Sixth, Exhibit D: the Group Policy(ies) and Certificate(s) of Insurance;

**4.2.7** Seventh, Exhibit E, Schedule of Premium Rates;

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

## ARTICLE V. EXECUTORY PROVISION

**5.1.0** Section 112 of the State Finance Law requires that any contract made by a State department which exceeds fifteen thousand dollars ($15,000) in amount be first approved by the Comptroller of the State of New York before becoming effective. The Parties recognize that the Agreement is wholly executory until and unless approved by the Comptroller of the State of New York.

## ARTICLE VI. CHOICE OF LAW

**6.1.0** The Parties agree that the Agreement shall be interpreted according to the laws of the State of New York. The Insurer shall be required to bring any legal proceeding against the DCS arising from the Agreement in New York State courts in Albany County.

## ARTICLE VII. DISPUTE RESOLUTION

**7.1.0** Except as otherwise provided in the Agreement, any dispute concerning any question of fact or law arising under the Agreement which is not disposed of by mutual agreement of the Parties shall be initially decided by the designee of the President of the Civil Service Commission (President). A copy of the written decision shall be furnished to the Insurer. 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 Insurer 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.

**7.2.0** 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.

## ARTICLE VIII. NEW YORK STATE REQUIREMENTS

**8.1.0** The Insurer 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.

## ARTICLE IX. WAIVER OF BREACH

**9.1.0** 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.

## ARTICLE X. OUTSIDE OF SCOPE

**10.1.0** The Insurer 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.

## ARTICLE XI. INDEMNIFICATION

**11.1.0** The Insurer agrees to indemnify, defend and save harmless the DCS, the State, its officers, agents and employees, for any claims or losses the DCS, 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 Insurer, its officers, employees, agents, consultants and/or sub-contractors. Furthermore, the Insurer agrees to indemnify, defend and save harmless the DCS 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 Insurer in the performance of the Agreement, and against any liability, 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 Article XII, Patent Copyright or Proprietary Rights Infringement.

**11.2.0** The Insurer shall also provide indemnification against all losses, and/or cost expenses (including reasonable counsel fees) that may be incurred by reason of the Insurer'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.

## ARTICLE XII. PATENT, COPYRIGHT OR PROPRIETARY RIGHTS INFRINGEMENT

**12.1.0** The Insurer, solely at its expense, shall defend any claim or suit which may be brought against the DCS or the State for the infringement of United States patents, copyrights or proprietary rights arising from the Insurer's or the DCS's use of any software, equipment, data, materials and/or information of any kind prepared, developed or furnished by the Insurer in connection with performance of the Agreement and, in any such suit, shall satisfy any final judgment for such infringement. The DCS shall give the Insurer 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.

**12.2.0** 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 Insurer without the Insurer's written consent.

**12.3.0** If, in the Insurer's opinion, any software, equipment, data, materials and/or information prepared, developed or furnished by the Insurer 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 Insurer's obligation to satisfy any final award, the Insurer may, with the DCS'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 DCS arising out of a claim that the DCS'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 DCS to the Insurer 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 Insurer 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 Insurer shall immediately notify the DCS and the Office of the Attorney General of the State of New York, in writing, and shall specify to what extent the Insurer believes it is and is not obligated to defend and indemnify under the terms and conditions of the Agreement. The Insurer shall in such event protect the interests of the State of New York and 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 Insurer, as is appropriate, including any jurisdictional defenses which the State shall have.

**ARTICLE XIII. YEAR 2000 WARRANTY**

**13.1.0** The Insurer warrants that services shall be provided under this Agreement in an accurate and timely manner insofar as accurately processing date/time data, including leap year calculations. In the event of any breach of this warranty, the Insurer shall restore the services to the same level of performance as warranted herein, or repair or replace the services with conforming, time being of the essence, at the Insurer's herein, or repair or replace the services with conforming, time being of the essence, at the sole cost and expense. This warranty shall survive beyond termination or expiration of the Agreement. Nothing in this warranty shall be construed to limit any rights or remedies otherwise available under this Agreement.

**ARTICLE XIV. FORCE MAJEURE**

**14.1.0** 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, slow downs 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.

**ARTICLE XV. TIME OF THE ESSENCE**

**15.1.0** The DCS and the Insurer acknowledge and agree that time is of the essence for the Insurer's performance under the Agreement.

**ARTICLE XVI. FEDERAL/STATE COMPLIANCE**

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

**16.2.0** The Insurer 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.

**16.3.0** Each Party agrees that it shall perform its obligations under this Agreement in accordance with all applicable federal and New York State laws, rules and regulations now or hereafter in effect.

**ARTICLE XVII. TAXES**

**17.1.0** It shall be understood that the DCS, 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 Insurer for same only if taxes would have been incurred through the DCS' normal business operations.

**ARTICLE XVIII. RIGHTS AND REMEDIES**

**18.1.0** 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.

**ARTICLE XIX. INDEPENDENT CONTRACTOR**

**19.1.0** The Parties agree that the Insurer is an independent contractor, and the Insurer, 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 DCS. Neither the Insurer nor any contractor nor sub-contractor shall thereby be deemed an agent, officer or employee of the State.

**ARTICLE XX. NO THIRD PARTY BENEFICIARIES**

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

**ARTICLE XXI. HEADINGS OR CAPTIONS**

**21.1.0** 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.

**ARTICLE XXII. PARTIAL INVALIDITY**

**22.1.0** Each Party agrees that it shall perform its obligations under the Agreement in accordance with all applicable laws, rules, and regulations 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.

**ARTICLE XXIII. FORMS AND PUBLICATIONS**

**23.1.0** All forms, materials and publications developed solely for use in NYPERL shall be the property of the DCS. The DCS reserves the right to copyright all such forms, materials and publications.

**23.2.0** Insurer materials used in conjunction with the Agreement agreed upon by the Parties as generic materials are specifically excluded from this provision.

**ARTICLE XXIV. CONFLICT OF INTEREST**

**24.1.0** The Insurer 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 Insurer shall ensure that no violation of these provisions will occur by reason of the Insurer's proposal for or negotiation and execution of this Agreement or in its delivery of services pursuant to this Agreement. If, during the term of the Agreement, the Insurer 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 Insurer shall notify the DCS in writing immediately. Should the DCS thereafter determine that such employment is inconsistent with State law, the DCS shall so advise the Insurer 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.

**24.2.0** The Insurer 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 Insurer to the New York State Ethics Commission, 39 Columbia Street, Albany, New York 12207; telephone 1-800-87-ETHICS.

## ARTICLE XXV. AUDIT AUTHORITY

**25.1.0** The DCS and the Office of the State Comptroller (OSC) shall have the authority to conduct financial and performance audits of the Contractor's delivery of NYPERL Services in accordance with the Agreement and any applicable State and federal statutory and regulatory authorities during normal business hours for scheduled audits. Nothing herein precludes DCS from conducting unannounced audits.

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

**25.2.1** Review of claim certification and adjudication procedures and systems;

**25.2.2** Review of processed claims to assess the accuracy of claims certification and adjudication, including, but not limited to, tests of the following: payroll and pension deductions and direct billings, non-duplication of benefits, proper coordination of benefits, payment of covered services only, and proper application of and compliance with other Agreement provisions;

**25.2.3** Review of documentary evidence to determine the accuracy and fairness of all items on the Financial Statement of Experience;

**25.2.4** Review of compliance with Performance Guarantees; and

**25.2.5** Review of any and all activities relating to the Insurer's administration of the Agreement.

**25.3.0** 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.

**25.4.0** Documentation necessary for an understanding of accounting, claim(s) payment, enrollment, billing or other systems and activities shall be made available by the Contractor. Such systems and activities shall be demonstrated to the State's auditing personnel upon request by the DCS or OSC. The Contractor shall provide documentation of computerized aspects of the accounting,

claim(s) payment, enrollment, billing and other systems to auditing personnel with full explanation of such systems.

25.5.0 The Contractor shall make available to the DCS's and the OSC's auditors all data in its computerized files that is relevant to and subject to the Agreement. Such data may, at the DCS's or the OSC's discretion, be submitted to the DCS or OSC in machine readable format, or the data may be extracted by the DCS or OSC, or by the Contractor under the direction of the DCS's or the OSC's auditors. Confidentiality of records relating to specific Insureds or Applicants and the Contractor's operations shall be appropriately respected and maintained by the DCS and the OSC.

25.6.0 The Contractor shall, at the DCS's or the OSC's request, search its files, retrieve information and records and provide to the DCS's or the OSC's auditors such documentary evidence as they require. Sufficient resources shall be made available by the Contractor for the efficient performance of audit procedures.

25.7.0 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 Article VII of this Agreement.

25.8.0 All records and documentation described in this Article for review and use by the DCS's and the OSC's auditors pertain to the financial experience and administration of the Agreement. The DCS's and the OSC's auditors may not access any such records and documentation which pertain to another agreement to which DCS is not a party.

25.9.0 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 Insurer.

## ARTICLE XXVI. CONFIDENTIALITY

**26.1.0** All claims and enrollment records relating to the Agreement are confidential and shall be used by the Insurer solely for the purpose of carrying out its obligations under the Agreement, for measuring the performance of the Insurer in accordance with the performance guarantees of the Agreement, and for the purpose of auditing the Insurer's performance under this Agreement pursuant to Article XXV of the Agreement. The Insurer shall protect the confidentiality of Applicant/Insured data in its possession by incorporating adequate measures in all management information and claims processing systems, including but not limited to physical controls, data segregation, and password protection.

**26.2.0** 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 Insured or Applicant, no records may be otherwise used or released to any party other than the DCS by the Insurer, its officers, employees, agents, consultants or sub-contractors 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 DCS, be grounds for cancellation of the Agreement.

**26.3.0** The Insurer, its officers, employees, agents, consultants and/or any sub-contractors 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 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 Applicants and Insureds.

**26.4.0** The Insurer shall be responsible for assuring that any agreement between the Insurer and any of its officers, employees, agents, consultants and/or sub-contractors contains a provision which strictly conforms to the provisions of this Article.

## ARTICLE XXVII. TERMINATION OF AGREEMENT

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

**27.2.0** The Agreement may be terminated by the DCS for cause upon the failure of the Insurer to comply with the terms and conditions of the Agreement, including any exhibits incorporated herein,

provided that the DCS shall give the Insurer written notice via registered or certified mail, return receipt requested, or hand delivery, such written notice to specify the Insurer's failure and the termination of the Agreement. Termination shall be effective thirty (30) Business Days after receipt of such notice unless the Insurer, in the opinion of the DCS, has cured such failure. The Insurer 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 DCS shall have the right to award a new contract to another insurer. Termination for cause shall create a liability upon the Insurer for actual damages incurred and for all reasonable additional costs incurred in reassigning this Agreement.

**27.3.0** The Agreement may be terminated if the DCS deems that termination would be in the best interest of the State provided that the DCS shall give written notice to the Insurer 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.

**27.4.0** The Agreement may be deemed terminated immediately upon the filing of a petition in bankruptcy by or against the Insurer unless such petition is dismissed within thirty (30) days, or upon the filing of a petition by the NYS Department of Insurance for liquidation or rehabilitation. If so deemed by the Department, such termination shall be immediate and complete, without termination costs or further obligations by the Department to the Insurer.

**27.5.0** In the event of termination for any reason, the Insurer shall not incur new obligations as of the date it receives notice of termination. The Insurer agrees, after consultation with the DCS, to cancel such outstanding obligations as the Insurer deems appropriate in the exercise of sound business judgment.

**27.6.0** 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 State's orderly administration of NYPERL.

**ARTICLE XXVIII. TURNOVER PLAN**

**28.1.0** Within thirty (30) Days of the DCS's written request, the Insurer shall provide for the DCS's approval a detailed written plan for turnover (Turnover Plan) which outlines, at a minimum, the tasks, milestones and deliverables associated with the transition of NYPERL Services to a new Insurer.

**28.2.0** Within fifteen (15) Business Days from DCS's receipt of the Turnover Plan, the DCS shall either approve the Turnover Plan or notify the Insurer, in writing, of the changes required to the Turnover Plan so as to make it acceptable to the DCS.

**28.3.0** Within fifteen (15) Business Days from the Insurer's receipt of the DCS's required changes, the Insurer shall incorporate said changes into the Turnover Plan and submit such revised Turnover Plan to the DCS.

**28.4.0** The Insurer shall be responsible for transitioning NYPERL in accordance with the approved Turnover Plan.

**28.5.0** Reserves shall be transferred to a successor carrier or to DCS (on a non-select basis) according to the following formula:

**28.5.1** Net Premium (Gross premiums received less premium refunds), plus investment income, less the following items:

**28.5.1.a** Claims paid;

**28.5.1.b** Reserve for claims incurred but unpaid as of the termination date, consistent with the assumptions underlying the premium rate development (i.e., the pricing assumptions), unless otherwise mutually agreed to by the parties;

**28.5.1.c** Start-up marketing and enrollment expenses incurred, not to exceed $2,860,000 (consistent with MedAmerica's proposed administrative expense budget per the RFP, Section V, Cost Proposal ), unless changes are mutually agreed to by the parties;

**28.5.1.d** Other administrative expenses of:

**28.5.1.d.1)** Underwriting expenses of $20 per guaranteed issue policy and $200 per underwritten policy;

**28.5.1.d.2)** 1.5% of Net Premium for premium taxes;

**28.5.1.d.3)** Claims expenses of 5% of Partnership Plan claims incurred and 6% of Non-Partnership Plan claims incurred; and

**28.5.1.d.4)** 6% of Net Premium for billing and all other administrative expenses.

**28.5.1.e** Administrative expenses paid to the New York State Department of Civil Service; and

**28.5.1.f** 8% of Net Premium for MedAmerica's contribution to reserves.

**28.5.2** Investment income will be determined as if the Net Premiums plus investment income less all items in 28.5.1.a through 28.5.1.f were invested each year at an annual effective rate of return of 7.5%.

**28.5.3** Notwithstanding Section 28.5.2, if the contract terminates pursuant to Section 27.3.0 of this Agreement, investment income will be determined as if the Net Premiums plus investment income less all items in 28.5.1.a through 28.5.1.f were invested each year at an annual effective rate of return of 5.7% if termination occurs during the first policy year; 5.9% if termination occurs during the second policy year; 6.1% if termination occurs during the third policy year; 6.3% if termination occurs during the fourth policy year; 6.5% if termination occurs during the fifth policy year; 6.7% if termination occurs during the sixth policy year; 6.9% if termination occurs during the seventh policy year; 7.1% if termination occurs during the eighth policy year; 7.3% if termination occurs during the ninth policy year; 7.5% if termination occurs during the tenth policy year or at anytime thereafter.

## ARTICLE XXIX. LEGAL AUTHORITY TO PERFORM

**29.1.0** The Insurer represents that it possesses the legal authority to deliver NYPERL Services in accordance with the terms and conditions of this Agreement.

**29.2.0** The Insurer acknowledges that the award of the Agreement is based on the Insurer's representation that it is authorized under Section 1117 of the New York State Insurance Law to issue long term care insurance contracts in New York State.

## ARTICLE XXX. ELIGIBILITY AND EFFECTIVE DATES OF ENROLLMENT

**30.1.0** Employees, Retirees, their Dependents, and such other persons as may be prescribed by the President of the Civil Service Commission shall be eligible to participate in NYPERL, subject to the provisions of 4 NYCRR Part 77, as amended, and the terms of this Agreement.

**30.2.0** Coverage under NYPERL for Insureds shall take effect in accordance with the provisions of 4 NYCRR Part 77, as amended, and the terms of this Agreement. On behalf of the President of the Civil Service Commission, the DCS shall exercise sole authority to determine the interpretation and application of these regulations and provisions.

**30.3.0** If an applicant elects to pay premium via payroll deduction, the effective date of coverage shall be no later than the first day of the second month following the month in which the certificate was issued by the Insurer.

**30.4.0** If an applicant elects to pay premium by pension deduction, or any method other than payroll deduction, and the Insurer issues the certificate *before the 15th of the month*, the effective date of coverage shall be no later than the first day of the following month.

**30.5.0** If an applicant elects to pay premium by pension deduction, or any method other than payroll deduction, and the Insurer issues the certificate *after the 15th of the month*, the effective date of coverage shall be the first day of the second month following the month in which the certificate was issued.

**30.6.0** In addition to the requirements set forth in this Article, if an Employee whose certificate is issued based upon guarantee issue does not meet the "actively at work" requirement referenced in Section 32.4.0 of this Agreement on the day coverage otherwise would be effective, then the Employee's coverage will be effective on the first day the Employee satisfies the "actively at work" requirement.

**30.7.0** Not withstanding any other term of this Article, no coverage shall take effect if the Insurer has not received the initial premium payment on or before the effective date of coverage. If the Insurer receives the initial premium payment after the scheduled effective date of coverage, the effective date shall be the date the Insurer receives the initial premium payment; and no coverage shall take effect prior to June 1, 2001.

## ARTICLE XXXI. RECORDS; ENROLLMENT INFORMATION TO BE FURNISHED

**31.1.0** The Insurer shall maintain records from which may be determined at all times the names of all Insureds hereunder and the benefits in force on each such Insured together with the date insurance became effective and the effective date of any change in benefits.

**31.2.0** The DCS, Participating Employers, Participating Agencies, Applicants, and Insureds shall furnish to the Insurer all information that the Insurer may reasonably require with regard to any matters pertaining to the provision of insurance by the Insurer pursuant to the terms of this Agreement. An Insured shall not be entitled to, or deprived of, benefits under the Agreement due to clerical errors.

## ARTICLE XXXII. PROGRAM SERVICES

**32.1.0** The Insurer shall provide Insurance for the term of the Agreement and as further specified in Section 32.4.0 of this Agreement, in compliance with New York State Civil Service Law in Article XI-A, as amended, and its implementing regulations, the New York State Insurance Law and its implementing regulations, and other State and federal Law as may be applicable.

**32.2.0** The Insurer shall have established and in operation, no later than June 1, 2001, an office that manages the insurance benefits and processes the claims submitted under NYPERL. The Insurer must undertake and complete all implementation activities by May 31, 2001, in the manner described in the Insurer's Proposal, Exhibit C, so that NYPERL is operational on June 1, 2001.

**32.3.0** The Insurer shall perform NYPERL Services as outlined in the RFP Section III. C, Exhibit C, in accordance with the terms and conditions set forth in the body of this Agreement including, but not limited to, the following:

**32.3.1 Program Implementation**

The Insurer must undertake and complete all implementation activities of NYPERL as described in this RFP, by May 31, 2001, so that on June 1, 2001 the Insurer can begin soliciting participation from persons eligible to participate in the Plan.

**32.3.2 Organizational Structure, Staff Qualifications and Experience**

The Insurer must maintain an organization sufficient to administer and manage NYPERL, including marketing, enrollment, premium collection, claims payment, transaction changes, record keeping and reporting.

**32.3.3 Employee Communication and Education**

**32.3.3.a** The Insurer shall be responsible for providing the necessary information to potential applicants to educate them about NYPERL. Subject to DCS approval, the Insurer shall be responsible for developing and carrying out a detailed education and communication plan, including timeframes, to solicit the participation of persons eligible to apply for NYPERL coverage in accordance with the following criteria:

The Insurer is not required to have a single enrollment period covering all potential participants. Subject to the approval of DCS, marketing and enrollment may be done for distinct defined groups based on status (Actives/Retirees) and/or geographic region. Enrollment periods for groups may overlap. The duration of the initial marketing campaign for a staged implementation for all groups combined shall not exceed eighteen (18) months.

**32.3.3.b** The Insurer shall develop a clear, thorough communication/educational campaign that may include, but is not limited to the use of the following:

**32.3.3.b.1)** Newsletter/brochure;
**32.3.3.b.2)** Group meetings/training;
**32.3.3.b.3)** Posters;
**32.3.3.b.4)** Announcements;
**32.3.3.b.5)** Hotline;

**32.3.3.b.6)** Audiovisual aids;
**32.3.3.b.7)** Q&A handouts-news articles; and
**32.3.3.b.8)** NYPERL Website.

**32.3.3.c** The Insurer shall design and produce all necessary forms, printed or video materials, and/or other communication tools to be used in introducing NYPERL. All such materials are subject to DCS approval and will be the property of the State;

**32.3.3.d** The Insurer shall develop and disseminate Program materials that:

**32.3.3.d.1)** Are timely;
**32.3.3.d.2)** Clearly present NYPERL plan design;
**32.3.3.d.3)** Meet legal requirements for plan documents;
**32.3.3.d.4)** Focus on the value of NYPERL benefits; and
**32.3.3.d.5)** Are maintained in adequate supplies and are readily available to Enrollees, Applicants, potential enrollees and Agencies.

**32.3.3.e** The Insurer shall design and implement a communications evaluation plan to demonstrate the effectiveness of the Insurer's communications plan. The resultant report also shall detail the cost of the Insurer's marketing effort.

**32.3.3.f** The Insurer shall pay for all development, production and mailing costs incurred to disseminate NYPERL communications materials to Enrollees, Applicants, potential Enrollees and Agencies.

**32.3.3.g** The Insurer shall retain no proprietary or literary rights with respect to material and shall execute any assignment found necessary to release any proprietary rights. The Insurer will provide all materials in sufficient quantities to promote and to operate NYPERL.

**32.3.3.h** DCS shall retain editorial control over all aspects of NYPERL materials, including final determination on the completeness and tone of the communications efforts of the Insurer. DCS will provide expeditious final approval of all print and/or other materials developed.

## 32.3.4 Insurer's Administration of Benefit Provisions

### 32.3.4.a Duties and Responsibilities

The Insurer is required to insure and administer NYPERL in accordance with the benefit design set forth in Section 32.4.0 of this Agreement.

### 32.3.4.b Application and Underwriting

The initial enrollment period for any given NYS employee/retiree must be not less than sixty (60) calendar days from the date NYPERL is marketed to that individual. In the case of a staged implementation, this requirement does not preclude an individual from seeking information or applying for coverage prior to the date the Insurer has scheduled that individual for solicitation.

**32.3.4.b.1)** The Insurer shall require all persons to apply using an application form provided by the Insurer to the enrollee. The application form shall ask the applicant questions designed to elicit appropriate information from the Applicant to determine eligibility based upon employment status, retiree status or status as a Dependent. The application shall be signed by the Applicant.

**32.3.4.b.2)** The Insurer shall carry out the underwriting process in accordance with the underwriting requirements of Section 32.4.0 of this Agreement.

**32.3.4.b.3)** Social underwriting is prohibited. Such non-medical factors unacceptable for use as primary determinants when refusing to issue a certificate include the applicant's: gender; marital status; living arrangements; sexual preference; presence or absence of an assumed support network; health status of probable caregiver spouse; current or past occupation (except where coverage is not available because the employer has excluded the entire class of employees); hobbies, except recognized high risk pursuits; educational level; or geographic location (except where residency is required for Partnership contracts).

32.3.4.c Benefit Eligibility

32.3.4.c.1) The Insurer shall determine benefit eligibility in accordance with the terms of this Agreement and the Insurer's proposal Section IV, Exhibit C.

32.3.4.c.2) Activities of Daily Living shall be defined in the insurance policy as follows:

"Bathing" means washing oneself by sponge bath; or in either a tub or shower, including the task of getting into or out of the tub or shower. "Continence" means the ability to maintain control of bowel or bladder function; or, when unable to maintain control of bowel or bladder function, the ability to perform associated personal hygiene (including caring for catheter or colostomy bag). "Dressing" means putting on and taking off all items of clothing and any necessary braces, fasteners or artificial limbs. "Eating" means feeding oneself by getting food into the body from a receptacle (such as a plate, cup or table) or by a feeding tube or intravenously. "Toileting" means getting to and from the toilet, getting on and off the toilet, and performing associated personal hygiene. "Transferring" means moving into or out of a bed, chair or wheelchair.

32.3.4.d Voluntary Care Planning/Management

The Insurer shall provide Voluntary Care Planning/Management in accordance with the Insurer's proposal Section IV, Exhibit C and consistent with the requirements for Voluntary Care Planning/Management found in Article 32.4.0 of the Agreement. All Voluntary Care Planning Management services are done at the Insurer's expense and not charged to the Insured's lifetime benefits. Voluntary Care Planning Management services shall:

32.3.4.d.1) Be available to Insureds regardless of where they are located;

32.3.4.d.2) Include an initial in-house assessment;

32.3.4.d.3) Include an in-person assessment any time there is a change in the plan of care or level of service;

32.3.4.d.4) Include at a minimum monthly monitoring of nursing home claimants and home care cases.

32.3.4.e Claims Processing

The Insurer shall be responsible for processing accurately all NYPERL claims submitted by or on behalf of Insureds and paying claims in accordance with NYPERL benefit design. The Insurer must have a system in place to make payment directly to Providers and/or Insureds. The Insurer's responsibilities shall include, but not be limited to, the following activities:

32.3.4.e.1) Maintaining a computerized system capable of accurately processing claims;

32.3.4.e.2) Developing and maintaining system edits that guarantee accuracy of claim payment;

32.3.4.e.3) Timely payment of claims;

32.3.4.e.4) Providing sufficient, trained claims processing staff and monitoring claims processing for accuracy in accordance with NYPERL design for covered expenses;

32.3.4.e.5) Maintaining accounting records necessary to support claim payments and providing reasonable access to those records for State audit requests;

32.3.4.e.6) Assigning adequate staff to resolve claims disputes on a timely basis;

32.3.4.e.7) Assisting Insureds or their designee in submitting claims;

32.3.4.e.8) Developing and providing Insureds or their designee with claim forms and related materials;

**32.3.4.e.9)** Developing and providing Insureds with Explanation of Benefits (EOB) statements the format and content of which are subject to review and approval of DCS;

**32.3.4.e.10)** Maintaining a system which accurately tracks Insureds in Waiver of Premium status;

**32.3.4.e.11)** Analyzing and monitoring claim submissions to identify inadequacies and possible fraud;

**32.3.4.e.12)** Recovering monies due to fraud, returning all monies recovered as appropriate and reporting fraud to appropriate authorities. The Insurer shall, in cases where potential fraud is detected, notify the DCS and proceed in accordance with the written procedures and protocols established by the Insurer, subject to the review and approval of the DCS and report such amounts on the Annual Financial Experience Statement.

**32.3.4.e.13)** Identifying claim payment errors, recovering monies as the result of overpayments, crediting to claims experience all identified overpayments resulting from claim payment errors and correcting underpayments;

**32.3.4.e.14)** Maintaining the security of the claims files; and

**32.3.4.e.15)** Maintaining a back-up system and disaster recovery system for processing claims in the event that the primary claims payment system fails or is not accessible.

**32.3.4.f** Coordination of Benefits

Benefits provided under NYPERL are to be coordinated with benefits provided for long term care by any group plan or any governmental program or government agency program, except Medicaid, in compliance with the coordination of benefits rules established by the NYS Department of Insurance at 11 NYCRR 52.23. The Insurer must create and maintain a COB file which

interfaces with the claims payment system to ensure accurate claims payment as stated in the Insurer's Proposal, Exhibit C.

**32.3.4.g** Appeals

**32.3.4.g.1)** For the Non-Partnership Option, the Insurer will establish a formal process, as set forth in the Insurer's Proposal, Exhibit C, which allows Providers and Insureds to appeal any decisions made by the Insurer which result in a denial of benefit eligibility or claim payment. The Insurer will establish procedures for notifying Insureds of their right to appeal and the steps necessary to file an appeal. There must be at least two (2) levels of appeal. Each level of appeal must constitute an independent, de novo review of the decision. The Insurer's second level appeal process of benefit eligibility denials must be conducted by an external independent agency.

**32.3.4.g.2)** For the Partnership Option, the Insurer will conduct its operations so as to be consistent with the Alternative Dispute Resolution requirements established by the New York State Partnership for Long Term Care, as set forth in Section VI of Exhibit I.A to the RFP, Insurer Participation Agreement.

**32.3.4.h** Customer Service

**32.3.4.h.1)** The Insurer shall establish a dedicated nationwide toll-free telephone service. This telephone service must be available to Insureds twenty-four (24) hours a day, seven days a week. An adequate staff of fully trained customer service representatives and supervisors must be available to provide assistance, at a minimum, from 8:30 AM to 6:00 PM ET, Monday through Friday, except for legal holidays observed by the State. During non-staffed hours, if any, an automated system must be available to facilitate return calls by the Insurer on the next business day. The Insurer must provide a back-up telephone system to be utilized in the event the primary telephone system fails or is unavailable.

32.3.4.h.2) The Insurer is responsible for having trained staff handle inquiries, complaints, problems, and questions regarding NYPERL. The Insurer shall be responsible for the timely resolution of all mail and telephone inquiries, complaints, problems, and questions received from Applicants, Insureds, and Providers. The Insurer must track telephone calls and correspondence. The Insurer must retain this information on-line for a sufficient length of time and be able to retrieve the data on-line with relative ease. The Insurer must, as appropriate, coordinate the resolution of inquiries, complaints, problems, and questions with DCS.

**32.3.4.i** Enrollment and Premium Administration System(s)

**32.3.4.i.1)** The Insurer is responsible for all enrollment and premium collection functions set forth in this Agreement. The Insurer's enrollment and premium administration system(s) shall be used by the Insurer in the processing of applications, collection and accounting of premium payments, and to support the administration and delivery of services/benefits, customer service, and the production and issuance of plan documents and management reports.

**32.3.4.i.2)** The Insurer shall be responsible for maintaining accurate, complete, comprehensive and timely enrollment data for Insureds based upon information provided to the Insurer by the Insured on the Insurer's signed application. The Insurer shall, among other uses authorized by the Agreement, use such enrollment data to process long term care claims, provide customer service and produce management reports.

**32.3.4.i.3)** The Insurer shall be responsible for obtaining from an employing agency verification of an Employee's employment status or a Retiree's retirement status at the time of application or on the date coverage is to be effective. The Insurer shall be responsible for verifying the eligibility of all other applicants based upon their

relationship to an Employee or Retiree. The Department shall assist the Insurer in developing appropriate agency contacts for the purpose of obtaining such verification.

The Insurer shall be responsible for obtaining the assistance of Participating Employers and Participating Agencies in identifying the employment or retirement status of the Participating Employer's or Participating Agency's employees and retirees.

**32.3.4.i.4)** The Insurer must be able to support payroll and pension deductions and direct payments. Employees may choose, but are not mandated, to make premium payments for themselves and their dependent(s) via payroll deduction. Retirees may choose, but are not mandated, to make premium payments for themselves and, their dependent (s) via pension deduction. The timing of and mechanism used by Employees and Retirees of Participating Employers and Participating Agencies to make premium payments shall be in accordance with the payroll cycle and ability of the Participating Employer or Participation Agency to support payroll or pension deductions. The Insurer shall maintain an integrated, automated and secure system linking the State's payroll and pension systems or the Participating Agency or Participating Employer's payroll and pension system with the Insurer's enrollment and premium administration system(s).

**32.3.4.i.5)** In those cases where the salary or pension is insufficient to make premium payments or the Employee/Retiree elects not to have the premium(s) deducted for him or herself and/or his/her Dependent(s), the Insurer shall bill the Insured directly. There shall be no additional charge to the Insured or the DCS for any costs associated with direct billing.

**32.3.4.i.6)** The Insurer shall protect the confidentiality of Applicant/Insured data contained in its enrollment and premium administration system(s) by incorporating adequate measures in all management information and claims processing systems, including but not

limited to physical controls, data segregation, and password protection.

**32.3.4.i.7)** The Insurer shall also have a backup system(s) available and in place to be used in the event the primary system(s) fails or cannot be accessed.

**32.3.4.j** Reporting

**32.3.4.j.1)** The Insurer shall submit management, utilization and financial reports as required by DCS for its use in the review, management, and analysis of the Program. Such reports shall be provided by the Insurer in paper format or in an EDP format that enables DCS to load information to its mainframe or PC-based computer system. The Insurer must have quality control measures in place to assure accuracy and timeliness of all management reports. Reports shall include, but not be limited to, the following:

**32.3.4.j.1)a)** Annual Financial Experience Report: The Insurer must submit an annual statement of NYPERL Financial Experience no later than seventy-five (75) days after the end of each calendar year. These statements must detail, at a minimum, the earned premiums and claims paid during the calendar year, changes in reserves, claims administration costs, risk charges assessed NYPERL, performance penalties as appropriate, interest charges or credits resulting from cash management, any audit credits, and all other charges and net dividend or loss. Such detail must include all charges and credits by the Insurer to NYPERL. Such statements shall report all transactions, including adjustments to prior periods, made in the period being reported upon. Adjustments to prior periods shall be fully documented and reported on the Annual Financial Experience Statement covering the period within which the adjustment was made.

**32.3.4.j.1)b)** Enrollment/Utilization Reports: The Insurer shall be required to submit such reports as required by law or regulation and as DCS deems necessary to monitor and evaluate NYPERL. The exact format, frequency and due dates for such reports shall be agreed upon by the Parties. Such reports may include, but are not limited to, periodic reporting of NYPERL enrollment, including plan options selected; evaluating the utilization trends and patterns by Insureds; reporting of Participating Agencies and Participation Employers that are solicited for enrollment; reporting of Participating Agencies and Participating Employers that have elected to join NYPERL; and comparing NYPERL's results to the Insurer's book of business, as well as other similar groups.

**32.3.4.j.1)c)** Ad Hoc Reports: The Insurer shall be required to submit such reports as DCS deems necessary to analyze NYPERL and/or justify administrative expenses. The exact format, frequency and due dates for such reports shall be agreed upon by the Parties.

**32.3.4.k** Spousal Benefit Transfer Rider

For non-Partnership policies, the Insurer shall offer to married insureds or domestic partners a Spousal Benefit Transfer Rider whereby if two partners select identical policies and one of them exhausts their benefits, the benefits of the partner's coverage can be shared so long as the contributing partner's benefit level is not reduced below a benefit duration period of two years. Acceptance of the rider is at the option of the insured. The premium for the rider shall be set forth in Exhibit E.

**32.4.0** The Insurer shall perform NYPERL Services as outlined in the RFP, Section III B, including, but not limited to, the provision of insurance benefits under the Group Policy and Certificate of Insurance, Exhibit D, in such a manner so as to be in accordance with the requirements of the

RFP and in compliance with the terms and conditions as set forth in the body of the Agreement, including, but not limited to, the following:

| NON-PARTNERSHIP OPTION | |
|---|---|
| **Benefit/Provision** | **Definition** |
| **Plan Payment Model** | Federal Tax Qualified<br>Reimbursement of incurred expenses for qualified long term care services with payment not to exceed the associated Daily Benefit Amount (DBA). If the DBA exceeds actual incurred expenses, the balance shall be pooled for future use by the Insured. |
| **Eligibility Criteria** | |
| 1. a. Employment Status or<br>b. Retirement Status | Employees and Retirees of New York State or a Participating Employer or Participating Agency (including Vestees and Dependent Survivors) and their Dependents. |
| 2. Age Minimum/Maximum | 18 years minimum/no maximum |
| 3. Participation Requirements | None. Employee or Retiree (including Vestee or Dependent Survivor) participation is not required for participation of their Dependents. |
| **Underwriting Criteria** | |
| Guaranteed Issuance | Employees who apply for coverage during the initial enrollment period and newly eligible Employees who apply for coverage within 60 days of their hire date or the date they first meet the criteria for guarantee issue are guaranteed issuance of coverage. The initial enrollment period shall be not less than sixty (60) calendar days from the date NYPERL is first marketed to that individual or the earliest possible effective date of coverage, whichever is later. The earliest possible effective date for New York State employees is June 1, 2001. The Employee must meet NYPERL's "Actively at Work Requirement." To meet NYPERL's Actively at Work Requirement the Employee must, on the day coverage is to begin, be at the employer's place of business or at a location to which the employer's business requires the Employee to travel and be able to fully perform the duties of the position for that Employee's normal workday. It includes any day on which the Employee is on vacation or on authorized leave provided such absence is not due to illness or injury or Leave Without Pay. An Employee shall mean any person in the service of the employer (State, PE or PA) who is paid by the employer and who:<br>1. is expected to work at least six biweekly pay periods; and<br>2. works at least half-time on a regular schedule; and<br>3. is on the payroll at the time of application; or<br>4. is in one of the following categories at the time of application:<br>a. a local elected official;<br>b. a paid member of a public legislative body; |

| NON-PARTNERSHIP OPTION (cont'd.) | |
|---|---|
| **Benefit/Provision (cont'd.)** | **Definition (cont'd.)** |
| **Underwriting Criteria (cont'd.)**<br><br>Guaranteed Issuance (cont'd.) | c. an unpaid board member of a public authority with at least six months service as a board member; or<br>d. an unpaid or paid elected member of a school board. |
| **Fully Underwritten** | 1) Any Employee who does not meet NYPERL's Actively at Work Requirement;<br><br>2) Employees who choose to apply for coverage after the initial offering and new Employees who choose to apply for coverage more than 60 days after their hire date;<br><br>3) An Employee's eligible Dependent(s); and<br><br>4) Retirees, Vestees, and Dependent Survivors and their eligible Dependents. |
| **Daily Benefit Amounts/Lifetime Maximum Amounts** | There shall be four (4) Nursing Home Care DBAs offered - $100/day, $150/day, $180/day or $250/day. The Applicant may choose coverage periods of 3 years, 5 years or Unlimited. The lifetime maximum benefit amount shall equal the number of years selected times 365 (days) times the Nursing Home Care DBA selected.<br><br>The DBA for Adult Care and Home Care benefits shall be set at 60% of the selected Nursing Home DBA option.<br><br>The DBA for Assisted Living shall be set at 100% of the selected Nursing Home DBA option. |
| **Inflation Protection** | There shall be two (2) options offered from which an Applicant must choose one. Either:<br><br>2) <u>Automatic Annual Benefit Increase Option:</u><br>Benefits shall increase by 5% compounded annually, with no increase in premium. The increases shall automatically occur on the anniversary of the Insured's coverage effective date and shall continue for as long as coverage remains in force; or<br><br>2) <u>Guaranteed Purchase Benefit Option:</u><br>Once every three (3) years, Insureds shall be offered the opportunity to increase benefits in an amount equal to 5% compounded annually without evidence of insurability, as long as the Insured elects the increase once in every two offerings. Premiums for additional coverage shall be based on the Insured's attained age. If the Insured declines the offer two times in succession, the Insured shall be offered future coverage increases subject to evidence of insurability and, if approved, subsequent offers to increase benefits shall not require evidence of insurability until the offer is again declined two times in succession. |

| NON-PARTNERSHIP OPTION (cont'd.) | |
|---|---|
| **Benefit/Provision (cont'd.)** | **Definition (cont'd.)** |
| **Benefit Eligibility** | Insureds who have been certified by a licensed health care practitioner as: 1) being unable, for at least 90 days, to perform two (2) or more Activities of Daily Living without Substantial Assistance from another individual; or 2) requiring Substantial Supervision to be protected from threats to health and safety due to severe cognitive impairment, are eligible for benefits. The Activities of Daily Living are Eating, Toileting, Transferring, Bathing, Dressing, and Continence.<br>Ongoing re-certification of an Insured's continued eligibility to receive benefits must be conducted at least once every twelve months. |
| **Elimination Period** | There shall be a once per lifetime elimination period of 90 calendar days before benefit payments shall begin. The Elimination Period shall commence on the first day the Insured is certified as benefit eligible due to an inability to perform ADLs without assistance or to cognitive impairment. Receipt of LTC services shall not be used as a requirement for establishing the Elimination Period; a certification of ADL deficiency or cognitive impairment is all that shall be necessary. Days need not be consecutive as long as they are accumulated within a 365/6 day period. The Elimination Period shall apply to all types of covered services, except for benefit payments for Respite Care, Transition Benefits, and Hospice Care. |
| **Covered LTC Services** | Shall include, but not be limited to:<br>• Skilled, Intermediate or Custodial Care in a Nursing Facility;<br>• Assisted Living Facility Care;<br>• Home Health Care – nursing service, occupational therapy, physical therapy, respiratory therapy, nutritional services;<br>• Home Care – home health aide services, maintenance or personal care, homemaker services if provided by a licensed/certified home care agency in accordance with the Insured's Plan of Care;<br>• Adult Day Care; and<br>• At home and in-patient Hospice Care. |
| **Exclusions** | NYPERL shall not include any exclusions or limitations for pre-existing conditions.<br><br>NYPERL shall not pay for:<br><br>1. Any expense which is:<br><br>a. Normally provided w/out charge in absence of this insurance; or<br>b. For the treatment of alcoholism or drug addition; or<br>c. Paid under a state or federal workers' compensation plan; reimbursed under Medicare or would be so reimbursed except for the application of a deductible, coinsurance or copayment amount, except where Medicare is secondary; paid or provided under any other government program, except Medicaid; or |

| NON-PARTNERSHIP OPTION (cont'd.) | |
|---|---|
| **Benefit/Provision (cont'd.)** | **Definition (cont'd.)** |
| **Exclusions (cont'd.)** | 2. Illness, treatment or medical conditions arising out of:<br><br>a. War or act of war (whether declared or undeclared);<br>b. Participation in a felony, riot or insurrection; or<br>c. Service in the armed forces or auxiliary units thereto.<br><br>NYPERL shall not exclude or limit benefits resulting from mental or nervous disorders whether organic or inorganic in nature, including Alzheimer's disease, as long as the Insured meets the benefit eligibility criteria. |
| | |
| **Alternate Care** | When warranted by the particular circumstances of an Insured, the Insurer may authorize coverage of services or settings not normally covered (e.g., unlicensed provider, innovative care, new type of care, etc.). The care need not be a less costly alternative, but should represent an appropriate level of care for the Insured – as agreed to by the Insured, an authorized legal representative of the Insured and/or the Insured's doctor. |
| **Ancillary Benefits** | NYPERL shall include a Transition Benefit to cover items such as emergency response systems, durable medical equipment and home modifications. The amount of this one-time only Transition Benefit shall be limited to 5 times the amount of the Nursing Home DBA. Payment shall be contingent upon certification that acquisition of the item(s) is expected to allow the Insured to remain in a home setting for at least 90 days.<br><br>NYPERL shall also include a Caregiver Training Benefit to train a family member or friend to care for the Insured. The lifetime maximum amount for this Caregiver Training Benefit shall be $500.<br><br>Neither of these two benefits shall be charged against the Insured's lifetime benefit amount. |
| **Bed Reservation** | NYPERL shall pay the Nursing Home, Assisted Living Facility or Hospice Care Facility to hold the Insured's bed while he/she is temporarily in the hospital. The maximum annual benefit shall be 21 calendar days per year, at the applicable DBA rate. |
| **Respite Care** | NYPERL shall pay for the cost of formal care provided to an Insured to give an unpaid informal caregiver time away from care giving (i.e., a limited break or vacation). The maximum annual benefit shall be 21 calendar days per year, at the applicable DBA. |
| **Voluntary Care Planning/Management** | The Insurer must, at the point an Insured becomes benefit eligible, provide assistance and advice in applying for and choosing LTC services based on the personal needs of the Insured. The Insurer must offer to provide the initial consultation on-site. Care Planning/Management services shall be rendered by a professional individual trained and possessing experience in arranging and managing long term care services. The Insured shall not be required to follow the Insurer's recommended Plan of Care, nor use the facilities or providers recommended by the Insurer. |

| NON-PARTNERSHIP OPTION (cont'd.) | |
|---|---|
| **Benefit/Provision (cont'd.)** | **Definition (cont'd.)** |
| **Voluntary Care Planning/Management (cont'd.)** | The cost of Care Planning/Management services rendered by the Insurer, including the cost of providing the initial consultation on-site if so requested by the Insured, shall be included in Premium and shall not be applied to the Insured's lifetime maximum amount. |
| **Portability** | Coverage shall continue and benefits provided if the Insured moves out of state. |
| **Premiums** | • Level Premium Rates based on age at entry and guaranteed renewable<br>• Employee pay-all<br>• No Commissions |
| **Premium Rate Guarantee** | 3 Year Minimum Rate Guarantee (i.e., Premium Rates guaranteed for the period 6/1/2001 through 5/31/2004) |
| **Third Party Notification** | The Insured, at the time of application and at least every two years thereafter, shall be requested to designate, update or change a third party designee or provide a waiver of designation to the Insurer. |
| **Waiver of Premium** | The Premium Waiver applies to all types of covered services. Premiums shall be waived after the Insured's eligibility has been established and the Elimination Period has been satisfied. Premiums shall resume six (6) months after the Insured is no longer eligible for services. |
| **Grace Period** | The Insured shall have a 65-day grace period for late payment of premium. |
| **Termination** | An Insured's coverage shall end when the first of the following occurs:<br>• The date the Insured's premiums are not paid when due, subject to NYPERL Grace Period;<br>• The date the Insured's maximum lifetime benefits are exhausted;<br>• The date the Insurer receives written notification from the Insured to terminate the Insured's coverage or on a later date specified in the notice; or<br>• The day after the date of the Insured's death.<br>If the Insured elects to cancel his/her coverage, cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation and without prejudice to the extension of benefits requirement of the New York State Department of Insurance Regulation 62, Section 52.25(b)(3).<br><br>Coverage cannot be cancelled because of an Insured's age, health status, health care needs, or use of benefits. |
| **Continuation of Coverage** | If an Insured's coverage ends for any reason other than due to a material misrepresentation or fraudulent statement by the Insured when applying for coverage, the Insured is entitled to either a continuation with the same benefits and provisions and with no change in premium rate, or a conversion with a rate based upon the original issue age of the Insured. Continuation and conversion shall be available as provided under New York State Insurance Regulation 11 NYCRR 52. Notwithstanding the preceding, the Insured may not continue or convert coverage if the coverage ends due to non-payment of premium or due to exhaustion of total benefits. |

| NON-PARTNERSHIP OPTION (cont'd.) | |
|---|---|
| **Benefit/Provision (cont'd.)** | **Definition (cont'd.)** |
| **Reinstatement** | If the Insured's coverage lapses due to non-payment of premiums, the Insured shall have a twelve (12) month period from the lapse date during which to apply for reinstatement at the same premium rate subject to evidence of insurability. Notwithstanding the preceding, if lapse was due to functional loss or severe cognitive impairment and the request for reinstatement is made within five (5) months of the lapse date, coverage shall be reinstated without evidence of insurability. In either case, reinstatement shall be effective upon receipt of all premiums due retroactive to the date coverage terminated. |
| **Policy Modification** | If a public program is expanded or developed to cover some or all aspects of long term care, the DCS reserves the right to modify NYPERL to supplement the public program. |

The NYPERL Partnership approved option shall be identical to the Non-Partnership Option, except as described below:

| PARTNERSHIP OPTION | |
|---|---|
| **Benefit/Provision** | **Definition** |
| **Daily Benefit Amounts/Lifetime Maximum Amounts** | The minimum DBA for Nursing Home Care shall be $148/day for 2001.<br><br>The minimum DBA for Assisted Living, Adult Care and Home Care benefits shall be set at 50% of the Nursing Home Care option which for 2001 is $74.<br><br>There shall be two (2) additional DBAs offered - $180/day and $250/day.<br><br>The DBA for Assisted Living, Adult Care and Home Care benefits shall be set at 50% of the selected Nursing Home DBA option.<br><br>The lifetime maximum benefit duration shall be equal to 3 years at the Nursing Home DBA; 6 years at the Home Care DBA ; or a combination thereof.<br><br>**Total asset disregard for Medicaid eligibility once the minimum benefit duration period and Medicaid income conditions are met.** |
| **Inflation Protection** | The level premium rates shall reflect an automatic annual increase in the DBA amount at a rate of 5% compounded annually. This feature is not optional unless the insured purchases coverage at age 80 or older. |
| **Alternate Care** | Not covered |
| **Bed Reservation** | NYPERL shall pay the Nursing Home, Assisted Living Facility or Hospice Care Facility to hold the Insured's bed while he/she is temporarily in the hospital. The maximum annual benefit shall be 20 calendar days per year, at the applicable DBA rate. |

| PARTNERSHIP OPTION (cont'd.) | |
|---|---|
| **Benefit/Provision (cont'd.)** | **Definition (cont'd.)** |
| **Respite Care** | NYPERL shall pay the cost of formal care provided to an Insured to give an unpaid informal caregiver time away from care giving (i.e., a limited break or vacation). The maximum annual benefit shall be 14 calendar days per year, at the applicable DBA. |
| **Voluntary Care Planning/Management** | At a minimum, the Insurer must comply with the Care Management provision set forth in the Insurer Participation Agreement, Exhibit I.A of the RFP, Exhibit B. |
| **Portability** | Coverage shall continue and benefits provided if the Insured moves out of state; however, Medicaid extended coverage is only available in NYS or according to NYS Medicaid authorization elsewhere. |

## ARTICLE XXXIII. MODIFICATION OF PROGRAM SERVICES

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

**33.2.0** In the event that the State and its public employee unions enter into collective bargaining agreements that require changes in design elements or requirements of the Agreement, the DCS shall notify the Insurer of such changes and shall provide the Insurer with reasonable notice to implement such changes.

**33.3.0** 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 which the Insurer is required to perform or deliver under the Agreement, the Insurer may submit a written request to the DCS to initiate review of the fee(s) received by the Insurer for services provided under the terms of the Agreement, accompanied by appropriate documentation as may be required by the DCS. The DCS reserves the right to review such request within a reasonable period of time and in its sole discretion make a written determination as to whether such request shall be approved or rejected. Should the DCS approve the Insurer's request to modify the fee(s), such approval shall be subject to written amendment and approval by the Office of the State Comptroller.

## ARTICLE XXXIV. PERFORMANCE GUARANTEES

The Parties agree that the following performance guarantees and the corresponding penalty(ies) for failure to meet the performance guarantees shall be implemented effective June 1, 2001. The Insurer acknowledges and agrees that failure to deliver NYPERL services in such a manner as to meet or exceed any or all of the performance guarantee(s) set forth in this Article, and/or fails to make any payment(s) of applicable penalty(ies) for such failure, does not relieve the Insurer of its obligation to deliver NYPERL services as otherwise set forth in the Agreement. Except for the Implementation Guarantee, the Insurer shall monitor and report to the DCS compliance with the performance guarantees on a monthly basis of each Calendar Year of the Agreement. Performance for the purpose of determining whether a penalty is due shall be measured on an annual basis. Penalty amounts due shall be paid to DCS no later than March 15 of the following calendar year. All performance guarantees are subject to audit in accordance with Article XXV of the Agreement.

### 34.1.0 Plan Implementation Guarantees and Penalties

**34.1.1** The Insurer guarantees, at a minimum, that all NYPERL implementation and start-up activities shall be completed no later than May 31, 2001, so that, effective June 1, 2001, the Insurer can assume full operational responsibility for NYPERL. For purposes of this performance guarantee, the Insurer must, on June 1, 2001, have in place its proposed:

**34.1.1.a** On-line claims processing system that accurately reimburses claims in accordance with NYPERL provisions and generates accurate Explanations of Benefits in a format approved by DCS, as per Section 32.3.4.e of this Agreement;

**34.1.1.b** On-line claims processing system able to process claims consistent with Section 34.4.0 of this Agreement;

**34.1.1.c** On-line enrollment and premium administration systems capable of performing the functions set forth in Section 32.3.4.i of this Agreement.

**34.1.1.d** Operational customer service toll-free telephone number staffed by trained customer service representatives able to provide telephone services, as per Section 32.3.4.h of this Agreement.

**34.1.1.e** Marketing Plan, including adequate trained staff and informational and education materials as per Section 32.3.3 of this Agreement.

**34.1.2** Penalty for Failure to Meet Plan Implementation Guarantee. The Insurer guarantees that each of the five (5) services included in the Implementation and Start-Up Guarantee listed above will be in place on or before June 1, 2001. For each of the five (5) implementation and start-up activities not completed by June 1, 2001, the Insurer must pay DCS a minimum penalty of $10,000. For each of the five (5) implementation and start-up activities listed above not completed by July 1, 2001, the Insurer must pay DCS a minimum penalty of $1,000 per day for each day that the specified implementation and start-up activity is not completed.

**34.2.0** **Telephone Service Guarantees and Penalties**

**34.2.1** At a minimum, the Insurer guarantees each of the following four (4) levels of service on the toll-free telephone number(s):

**34.2.1.a** Telephone Service Availability: The Insurer guarantees that the telephone system, reported monthly and measured annually, shall be operational and available to Applicants and Insureds at least 99.5% of the scheduled time, 24 hours a day, every day of the year, with customer service representatives available during the scheduled time of 8:30 AM to 6:00 PM, Monday through Friday, except for legal holidays observed by the State.

**34.2.1.b** Telephone Response Time: The Insurer guarantees that at least ninety (90) percent of the incoming calls to the toll-free line will be answered by a customer service representative within sixty (60) seconds, reported monthly and measured annually;

**34.2.1.c** Telephone Abandonment Rate: The Insurer guarantees that the percentage of incoming toll-free line calls in which the caller disconnects before the call is answered shall not exceed five (5) percent, reported monthly and measured annually. The measurement shall not include calls abandoned in less than 20 seconds; and

**34.2.1.d** Telephone Blockage Rate: The Insurer guarantees that not more than three percent (3%) of incoming calls to the toll-free line, reported monthly and measured annually, are blocked by a busy signal.

**34.2.2** Penalty for Failure to Meet Telephone Service Guarantees. For each of the four (4) Telephone Service Guarantees listed above, the Insurer guarantees that each will be met or exceeded and a penalty for failure to meet the guarantee(s) is as follows:

**34.2.2.a** Telephone Service Availability: For each 2% below the standard of 99.5% that the telephone system is not operational and available to Insureds and Providers with customer service representatives available during the scheduled times of 8:30 AM to 6:00 PM, Monday through Friday, except for legal holidays observed by the State, the Insurer shall pay DCS a penalty of $2000.

**34.2.2.b** Telephone Response Time: For each 1% of the incoming calls to the toll-free line below the standard of 90% that are not answered by a customer service representative within sixty (60) seconds, the Insurer shall pay DCS a penalty of $2,000.

**34.2.2.c** Telephone Abandonment Rate: For each 1% of incoming calls to the toll-free line in which the caller disconnects before the call is answered in excess of the standard of five percent (5%), the Insurer shall pay the DCS a penalty of $2,000.

**34.2.2.d** Telephone Blockage Rate: For each 1% of incoming calls to the toll-free line that are blocked by a busy signal, in excess of the standard of three percent (3%), the Insurer shall pay DCS a penalty of $2,000.

**34.3.0** **<u>Claim Payment Accuracy Guarantees and Penalties</u>**

**34.3.1** The Insurer, at a minimum, guarantees:

**34.3.1.a** Financial Accuracy: At least a ninety-seven (97) percent financial accuracy rate shall be maintained for all NYPERL claims processed and paid. This shall be measured by dividing the number of claims paid correctly by the number of claims reviewed. Results shall be reported monthly and

measured annually, using statistical estimate techniques at the ninety-five (95) percent confidence level with precision of +/- 3%.

**34.3.1.b** Non-Financial Accuracy: At least a ninety-seven (97) percent non-financial accuracy rate for all NYPERL claims processed and paid during each period shall be maintained. This shall be measured by dividing the number of claims with no errors by the total number of claims reviewed. Results shall be reported monthly and measured annually using statistical estimate techniques at the ninety-five (95) percent confidence level with precision of +/- 3%. Non-financial errors include, but are not limited to, entry of incorrect date of service, incorrect Provider name, incorrect remark code, and failure to investigate COB.

**34.3.2** Penalty for Failure to Meet Claims Payment Accuracy Guarantees: For the two Claims Payment Accuracy Guarantees listed above, the Insurer guarantees that each will be met or exceeded and propose a penalty for failure to meet the guarantee(s) using the following formats:

**34.3.2.a** For each 2% below the Financial Accuracy Rate of ninety-seven (97) percent, the Insurer shall pay the DCS a penalty of $10,000. At least a ninety-seven (97) percent Financial Accuracy rate for all NYPERL claims processed and paid during each period shall be maintained. This will be measured by dividing the number of claims paid correctly by the number of claims reviewed. Results will be measured and reported annually using statistical estimate techniques at the ninety-five (95) percent confidence level with precision of +/- 3%; and

**34.3.2.b** For each 2% below the Non-Financial Accuracy Rate of ninety-seven (97) percent, the Insurer shall pay the DCS a penalty of $10,000. At least a ninety-seven (97) percent Non-Financial Accuracy rate for all NYPERL claims processed and paid during each period shall be maintained. This will be measured by dividing the number of claims with no errors by the total number of claims reviewed. Results will be measured and reported annually using statistical estimate techniques at the ninety-five (95) percent confidence level with precision of +/- 3%. Non-Financial errors include, but are not limited to, entry of incorrect patient name, incorrect date of service,

incorrect provider name, incorrect remark code, and failure to investigate COB.

**34.4.0 Turnaround Time for Claims Guarantees and Penalties**

**34.4.1** The Insurer guarantees that:

**34.4.1.a** Ninety-nine (99) percent of all claims submitted for services rendered under NYPERL, reported monthly and measured annually, shall be paid within forty-five (45) calendar days of their receipt by the Insurer or its designee. This measurement shall not include those claims where the obligation of the Insurer to pay the claim is not reasonably clear, or when there is a reasonable basis supported by specific information, subject to review by the State, that such claim was submitted fraudulently; and

**34.4.1.b** In those cases where the obligation of the Insurer to pay a claim is not reasonably clear, due to a good faith dispute regarding the claimant's eligibility for coverage, the liability of another insurer or corporation or organization for all or part of the claim, the amount of the claim, the benefits covered under NYPERL, or the manner in which services were accessed or provided; the Insurer shall pay any undisputed portion of the claim within forty-five (45) calendar days of its receipt of such claim and notify the claimant, in writing, within thirty (30) calendar days of its receipt: (1) that the Insurer is not obligated to pay the claim, stating the specific reasons why it is not liable; or (2) to request all additional information needed to determine the Insurer's liability or to make payment. Results shall be reported monthly and measured annually.

**34.4.2** Penalty for Failure to Meet Turnaround Time for Claims Guarantees. For the two Turnaround Time for Claims guarantees listed above, the Insurer guarantees that each will be met or exceeded and a penalty for failure to meet the guarantee(s) is as follows:

**34.4.2.a** For each 3% of claims received by the Insurer or its designee not paid within forty-five (45) calendar days below the standard of ninety-nine (99) percent, reported monthly and measured annually, the Insurer shall pay the DCS a penalty of $10,000. (Note: This measurement shall not include those claims where the obligation of the Insurer to pay the claim is not reasonably clear, or

when there is a reasonable basis supported by specific information, subject to review by the State, that such claim was submitted fraudulently); and

**34.4.2.b** In the case of those claims where the obligation of the Insurer to pay the claim is not reasonably clear due to the factors set forth in Section 34.4.1.b; should the Insurer not: 1) pay any undisputed portion of the claim within forty-five (45) calendar days of its receipt; and/or 2) notify the claimant, in writing, within thirty (30) calendar days of the receipt of the claim that the Insurer is not obligated to pay the claim, stating the specific reasons why it is not liable or to request all additional information needed to determine the Insurer's liability or to make payment; then the Insurer shall pay DCS a penalty of $1000 for each such claim.

**34.5.0 Benefit Eligibility Appeals Timeliness Guarantees and Penalties**

**34.5.1** The Insurer guarantees as follows:

**34.5.1.a** First Level Appeals: The Insurer guarantees that at least ninety-five (95) percent of all appeals of benefit eligibility denials at the first level of appeal will be reviewed and a determination made within 10 business days of receipt of the request for the appeal or receipt of necessary additional information from the Insured, his/her physician or Provider. Results shall be reported monthly and measured annually.

**34.5.1.b** Second Level Appeals: The Insurer guarantees that at least ninety-five (95) percent of all appeals of benefit eligibility denials at the second level of appeal will be reviewed and a determination made within 30 business days of receipt of the request for the appeal or receipt of necessary additional information from the Insured, his/her physician or Provider. Results shall be reported monthly and measured annually.

**34.5.2** Penalty for Failure to Meet Benefit Eligibility Appeals Timeliness Guarantees: For the two Benefit Eligibility Appeal Timeliness Guarantees listed above the Insurer guarantees that each will be met or exceeded and the penalty for failure to meet the guarantee(s) is as follows:

**34.5.2.a** First Level Appeals: For each 1% of first level benefit eligibility denial appeals not processed within 10 business days below the standard of ninety-five (95) percent, the Insurer shall pay the DCS a penalty of $2,000. To satisfy this guarantee, first level appeals of benefit eligibility must be reviewed and a determination made within ten (10) business days of receipt of the appeal or receipt of necessary additional information from the Insured, his/her physician or Provider.

**34.5.2.b** Second Level Appeals: For each 1% of second level benefit eligibility denial appeals not processed within 30 business days below the standard of ninety-five (95) percent, the Insurer shall pay the DCS a penalty of $2000. To satisfy this guarantee, second level appeals of benefits eligibility must be reviewed and a determination made within thirty (30) business days of receipt of the appeal or receipt of necessary additional information from the Insured, his/her physician or Provider.

**34.6.0** **<u>Management Reports Guarantee and Penalty</u>**

**34.6.1** The Insurer guarantees that management reports as specified in Section III.C.10 of the RFP, Exhibit C, shall be delivered no later than the agreed upon due date of the report.

**34.6.2** Penalty for Failure to Meet Management Reports Guarantee. For the Management Reports Guarantee listed above, the Insurer will meet or exceed the guarantee. For each report that is not received by the report due date, the Insurer shall pay the DCS a penalty of $500 for each business day between the due date and the date the report is received by DCS.

**34.7.0** **<u>Underwriting Turnaround Guarantees and Penalties</u>**

**34.7.1** The Insurer guarantees that:

**34.7.1.a** Ninety-nine (99) percent of all underwriting decisions, reported monthly and measured annually, shall be made and mailed to the Applicant within ten (10) calendar days of the Insurer's receipt of the Applicant's application for coverage, or the need for additional information identified and a request for that information is mailed to the Applicant.

**34.7.1.b** In cases where the Insurer's final underwriting decision is contingent upon additional information, reported monthly and measured annually, the Insurer guarantees that ninety-nine (99) percent of all underwriting decisions shall be made and mailed to the applicant within five (5) business days of receipt by the Insurer of the requested additional information.

**34.7.2** Penalty for Failure to Meet Underwriting Turnaround Guarantees: For the two Underwriting Turnaround Guarantees listed above, the Insurer guarantees that each will be met or exceeded and the penalty for failure to meet the guarantees) is as follows:

**34.7.2.a** For each 5% of underwriting decisions not made and mailed to the applicant within ten (10) calendar days below the standard of ninety-nine (99) percent, the Insurer shall pay the DCS a penalty of $2000.

**34.7.2.b** In cases where the Insurer's final underwriting decision is contingent upon additional information, for each 5% of underwriting decisions not made and mailed to the applicant within five (5) business days below the standard of ninety-nine (99) percent, the Insurer shall pay the DCS a penalty of $2000.

**ARTICLE XXXV. INSURER PERSONNEL**

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

**35.2.0** The Insurer 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 Insurer will designate and propose to the Department an equally qualified alternate with full authority to act for the unavailable key person.

**35.3.0** The Insurer 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 Insurer.

**35.4.0** The Department reserves the right to demand the reassignment or cancellation of assignment to duties under the Agreement of any Insurer personnel so assigned. The Department shall not exercise thè authority unreasonably. The Insurer 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 Insurer setting forth its reasons with specificity.

## ARTICLE XXXVI. OPERATIONAL CONTACTS

**36.1.0** The Insurer shall maintain appropriate corporate and/or legal authority, which shall include, but not be limited to, the maintenance of an administrative organization capable of delivering NYPERL 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 NYPERL services are to be delivered pursuant to this Agreement. The Insurer shall also maintain operations, financial and legal staff which 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 Insurer shall in no way create any agency relationship between the DCS and the Insurer.

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

**36.3.0** The Insurer must cooperate fully with any other contractors who may be engaged by the DCS relative to NYPERL and the Agreement.

**36.4.0** The Insurer must ensure that all contacts by the Insurer 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 DCS's Contract Manager.

## ARTICLE XXXVII. SUB-CONTRACTORS

**37.1.0** The Insurer may arrange for specified portions of its responsibilities under the Agreement to be subcontracted to a qualified organization. In such situations, said sub-contractors must be clearly identified and the nature and extent of their involvement in and/or proposed performance under the Agreement must be fully explained by the Insurer to the DCS. The Insurer retains the ultimate responsibility for all services performed under the Agreement. The DCS reserves the right to approve all proposed subcontracting arrangements of the Insurer for the provision of Program Services in Article XXXII of the Agreement.

**37.2.0** All subcontracts shall be in writing and shall contain provisions which are functionally identical to, and consistent with, the provisions of the Agreement. Such functionally identical and consistent provisions shall include, but not be limited to, the following provisions of the Agreement: Article VIII, Appendix A - Standard Clauses For All New York State Contracts, attached hereto and incorporated herein as Exhibit A; Article XXV, Audit Authority; Article XXVI, Confidentiality; and Article XXVII, Termination of Agreement.

**37.3.0** A copy of any proposed subcontract relating to the Insurer's performance under this Agreement, shall be furnished to the Department before its execution for the Department's review and approval. The Department will review the document(s) and advise the Insurer of its approval or disapproval within 30 days.

**37.4.0** The Insurer shall give the DCS immediate notice in writing of the initiation of any legal action or suit which relates in any way to a subcontract or which may affect the performance of the Insurer's duties under the Agreement.

**37.5.0** The DCS's requirement of prior approval of any subcontract under the Agreement shall not make the DCS or the State of New York a party to any subcontract or create any right, claim, or interest in the sub-contractor or proposed sub-contractor against the DCS.

**37.6.0** Any subcontract shall not relieve the Insurer in any way of any responsibility, duty and/or obligation of the Agreement.

## ARTICLE XXXVIII. CONSULTING SERVICES

**38.1.0** The Insurer shall meet the ongoing advice and recommendation needs of the DCS regarding long term care benefits and NYPERL administration by providing consultant services in a prompt and professional manner. Such responsibility shall include, but is not limited to, keeping the DCS informed concerning such matters as technological improvements, administrative improvements, and State/Federal legislation which may affect benefit provisions or requirements. The Insurer acknowledges and agrees that the DCS is under no obligation to follow or use the consultant services provided by the Insurer under the Agreement.

## ARTICLE XXXIX: DEVELOPMENT OF POLICIES AND CERTIFICATES OF INSURANCE

**39.1.0** In accordance with Civil Service Law Article XI-A, the Insurer shall present to the DCS its recommendations for the development of the necessary policies for NYPERL and for NYPERL Partnership Option, and for the Certificates to be issued to Insureds thereunder. The DCS shall review the Insurer's recommendations and shall advise the Insurer of the manner in which the Policy(s) and Certificate(s) shall be developed and issued.

**39.2.0** The Insurer will distribute to each Insured hereunder, a Certificate which will state the benefits to which the Insured is entitled, to whom such benefits are payable, to whom claims should be submitted, and which shall summarize the provisions of the Policy principally affecting the Insured.

**39.3.0** The Insurer will deliver the Policies to the DCS on or before their respective effective dates, and the Insurer will deliver to each Insured a certificate of insurance within 10 business days after the enrollee is accepted for coverage under the Plan by the Insurer.

## ARTICLE XL. NYPERL PREMIUM

**40.1.0** Premium Rates

**40.1.1** The Premium Rates for the respective insurance policies provided under the Agreement are set forth in Exhibit E - Schedule of Premium Rates to this Agreement, hereinafter referred to as "Schedule of Premium Rates."

**40.1.2** Premium Rates set forth in Exhibit E shall be in effect for NYPERL beginning on June 1, 2001 and shall be guaranteed through May 31, 2004.

**40.1.3** The Parties agree that for the term of this Agreement the Premium Rates to be contained in the "Schedule of Premium Rates," Exhibit E, are based upon the following assumptions and/or requirements and shall not be conditioned and/or contingent:

**40.1.3.a** Premium rates must be based on and include all costs associated with NYPERL design as described in Sections III.B and IIIC of the Proposal, Exhibit B;

**40.1.3.b** There shall be no commissions;

**40.1.3.c** Startup costs shall be amortized over a ten year period on a straight line basis at a rate of 10% per year;

**40.1.3.d** The Schedule of Premium rates includes an administrative fee of $.50 per month per Insured. The administrative fee shall be paid by the Insurer to DCS and is due by the fifteenth day of the following month receipt by the Insurer; and

**40.1.3.e** The modal factors are as follows: Quarterly 0.26; Semi-Annual 0.52 and Monthly 0.09.

**40.2.0** Direct Methods of Premium Payment

Direct Methods of premium payment shall include:

**40.2.1** Electronic Funds Transfer on a monthly, quarterly, semi-annually or annual basis;
**40.2.2** Credit Card on a monthly, quarterly, semi-annually or annual basis; and
**40.2.3** Direct Paper Bill on a quarterly, semi-annually or annual basis

**40.3.0** Premium Rate Changes

**40.3.1** The Insurer may request a change to any or all of the Premium Rates presented in the "Schedule of Premium Rates," Exhibit E, on the third Premium Renewal Date (June 1, 2004).

**40.3.2** Subsequent to June 1, 2004, premium rates shall remain unchanged for the term of the agreement except as follows:

**40.3.2.a** If actual experience accumulated to the end of an experience period plus the present value of future expected experience results in a lifetime anticipated loss ratio in excess of the original loss ratio plus the explicit risk/surplus load.

**40.3.2.b** If a competing program is introduced and endorsed by the State with underwriting screening tools that are more stringent than those underwriting screening tools found in NYPERL.

**40.3.2.c** If mandated by the New York State Insurance Department.

**40.3.3** The Insurer shall furnish, in accordance with the DCS's written specifications, documentary evidence to justify its proposed Premium Rates. The DCS may request, and the Insurer shall provide, additional information, clarification, greater detail and/or alternate analysis of the documentary evidence supporting the Insurer's proposed Premium Rates.

**40.3.4** A formal written notice for proposing new Premium Rates with supporting documentation as outlined in this Article shall be delivered by the Insurer to the DCS, at least one hundred twenty (120) Days prior to the date such new Premium Rates are to become effective.

**40.3.5** No rate increase will be implemented solely as a result of actual interest earnings being less than assumed in pricing.

**40.4.0** Premiums rates for the $150 daily nursing home benefit level will be 150% of the premium rate for the $100 daily nursing home benefit level.

**40.5.0** The premium rate for the Assisted Living Facility Daily Benefit Amount that is 100% of the Nursing Home Care Daily Benefit Amount will be no greater than the premium rate that would be charged for an Assisted Living Facility Daily Benefit Amount that is 60% of the Nursing Home Care Daily Benefit Amount.

**40.6.0** Insureds may elect to pay premiums under a 10-year paid in full option set forth in Exhibit E.

**ARTICLE XLI. GRACE PERIOD AND CANCELLATION OF INSURANCE**

**41.1.0** The Insured shall have an initial grace period of thirty (30) days for each premium that is unpaid on the due date. If the Insurer has not received an Insured's premium by the thirtieth day following the due date and the Insured pays premium directly to the Insurer, the Insurer shall send a notice to the Insured and their lapse designee. If the Insurer has not received an Insured's premium by the thirtieth day following the due date and the Insured pays premium through payroll or pension deduction, the Insurer shall send a notice to the DCS if the Insured's premium payment is being made by a New York State employee or retiree or to the appropriate Participating Employer or Participating agency if the Insured's premium payment is being made by a Participating Employer or Participating Agency employee or retiree. The notice shall explain

that a payment has been missed and that coverage under the certificate may lapse. The Insured, DCS, Participating Employer or Participating Agency shall have an additional thirty-five (35) days from the date the notice is mailed to remit payment. If payment is received by the Insurer within thirty-five (35) days from the date the notice is mailed there shall be no lapse in coverage. In the event payment is not received by the Insurer within thirty-five (35) days from the date the notice is mailed, the Insured shall send a notice of cancellation to the Insured on the thirty-fifth day.

**41.2.0** In the event an Insured's coverage lapses due to non-payment of premium, the Insured shall have twelve (12) months from the cancellation date to apply for reinstatement of coverage at the same premium rate subject to evidence of insurability. However, if the lapse is due to functional loss or severe cognitive impairment and the request for reinstatement is made within five (5) months of the lapse date, coverage shall be reinstated without evidence of insurability. Reinstatement is effective upon receipt by the Insured of all premiums due retroactive to the date coverage terminated.

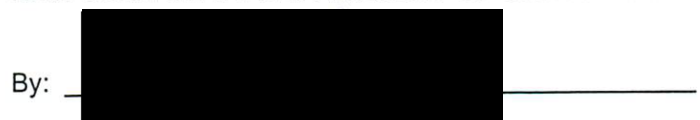
## ARTICLE XLII. CESSATION OF INSURANCE

**42.1.0** All insurance hereunder shall automatically be cancelled upon the termination of this Agreement pursuant to Article XXVII: Termination of Agreement, or upon the cancellation pursuant to Article XLI: Grace Period and Cancellation of Insurance, of this Agreement; an Insured's insurance shall cease in accordance with the provisions pertaining to cessation of insurance in the Insured's Certificate.

**IN WITNESS WHEREOF,** the parties hereto have hereunto signed this AGREEMENT on the day and year appearing opposite their respective signatures.

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE**

Date: 5/7/01

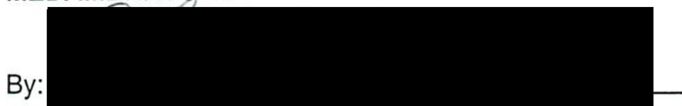
By: 

Name: George C. Sinnott

Title: Commissioner

**MEDAMERICA INSURANCE COMPANY OF NEW YORK**

Date: 5/3/01

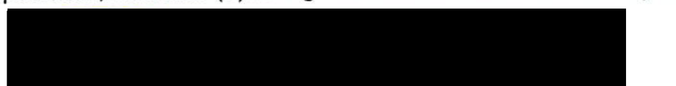
By: 

Name: Christopher D. Perna

Title: President

**STATE OF** )
) **ss:**
**COUNTY OF** )

On the 3rd day of May, 2001, before me personally came Christopher D. Perna, to me known, and known to me to be the person who executed the above instrument, who, being duly sworn by me, did for her/himself depose and say that (s)he is the President of MedAmerica Insurance Company of New York the corporation described in and which executed the above instrument; and that it was executed by the order of the Board of Directors of said corporation; and that (s)he signed his/her name thereto by like order.



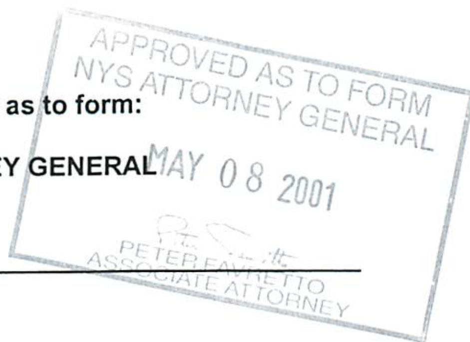
NOTARY PUBLIC

My Commission expires: January 5, 2002

JILL MARIE SALERNO
Notary Public, State of New York
Qualified in Monroe County
My Commission Expires ~~Dec. 28~~ Jan 5, 2002

**Approved as to form:**

**ATTORNEY GENERAL**




By: ______________________

Date: ______________________

**Approved:**

**STATE COMPTROLLER**

By:

Date: 9/28/01

# EXHIBITS

## LIST OF EXHIBITS


| | |
|---|---|
| Exhibit A: | Appendix A – Standard Clauses for all New York State Contracts<br>Non-Collusive Bidding Certification<br>MacBride Act Statement |
| Exhibit B: | Request For Proposal |
| Exhibit B1: | Official DCS response to questions raised concerning the RFP, dated April 27, 2000 |
| Exhibit C: | Insurer's proposal, dated June 22, 2000 |
| Exhibit C1: | Official transcript of the Management Interview, dated August 24, 2000 |
| Exhibit C2: | Related correspondence, dated August 31, 2000; October 17, 2000; and October 25, 2000 |
| Exhibit D: | Group Policies and Certificates of Insurance |
| Exhibit E: | Schedule of Premium Rates |

**APPENDIX A**
**STANDARD CLAUSES FOR ALL NEW YORK STATE 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 previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment 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 $15,000 (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 $15,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office.

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.** In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. Furthermore, in accordance with Section 22O-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 monies due hereunder for a second or subsequent violation.

6. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

7. **NON-COLLUSIVE BIDDING REQUIREMENT.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants 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 contractors execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

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

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

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

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

12. **EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN**. In accordance with Section 312 of the Executive law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of $25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of $100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of $100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then: (a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation; (b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized

representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and (c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. Contractor will include the provisions of "a, "b", and "c" above, in every subcontract over $25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the Work) except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the 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 XI-A of the State Finance Law to the extent required by law.

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

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

18. **PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS**. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State. In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State, otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

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

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

subcontractors and suppliers on its procurement contracts. Information on the availability of New York State subcontractors and suppliers is available from:

Department of Economic Development
Division for Small Business
30 South Pearl Street
Albany, New York 12245
Tel. 518-292-5220

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

Department of Economic Development
Minority and Women's Business Development Division
30 South Pearl Street
Albany, New York 12245
http://www.empire.state.ny.us.

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than $1 million: (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State; (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended; (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. **RECIPROCITY AND SANCTIONS PROVISIONS** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383 respectively) require that they be denied contracts which they would otherwise obtain. Contact the Department of Economic Development, Division for Small Business, 30 South Pearl Street; Albany New York 12245, for a current list of jurisdictions subject to this provision.

Revised November 2000

**BIDDER IS REQUIRED TO SIGN BOTH SECTIONS ON THIS PAGE**

**NON-DISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND MACBRIDE FAIR EMPLOYMENT PRINCIPLES**

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

(1) Have business operations in Northern Ireland.

Yes _____ or No __X__

If yes:

(2) 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.

(Contractor's Signature)

MedAmerica Insurance Co. of New York, Inc.
(Name of Business)

**NON-COLLUSIVE BIDDING CERTIFICATION**

By submission of this bid, each bidder and each person signing on behalf of any bidder 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 bidder 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 bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

(3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

(Contractor's Signature)

MedAmerica Insurance Co. of New York, Inc.
(Name of Business)

Rev. 11/2000

# Exhibit D
# Group Policies and Certificates of Insurance

# Exhibit E
# Schedule of Premium Rates