

**SECTION VII: CONTRACT PROVISIONS**

**AGREEMENT NO. C000587**

THIS Agreement is entered into by and between New York State Department of Civil Service (“Department” or “DCS”), having its principal office at the Alfred E. Smith Building, Albany, N.Y. 12239 and \_\_\_\_\_, a corporation authorized to do business in the State of New York with a principal place of business located at \_\_\_\_\_, and collectively referred to as “the Parties.”

**WITNESSETH**

WHEREAS, New York State, through DCS, oversees the enrollment eligibility of enrollees and in the New York State Health Insurance for New York State employees, Participating Employers (PE’s) and Participating Agencies (PA’s); and

WHEREAS, on June 18, 2008, the Department of Civil Service issued a Request for Proposal (RFP) entitled, “Dependent Eligibility Audit Services” (DEAS), to secure the services of a qualified organization to provide dependent eligibility audit services; and

WHEREAS, after thorough review and evaluation by the Department of proposals received in response to the RFP, the Contractor’s proposal was selected as representing the best value to the State; and

WHEREAS, the Department, in reliance upon the expertise of the Contractor, desires to engage the Contractor to deliver the DEAS, in the manner set forth in the RFP and the Contractor’s Proposal, pursuant to the terms and conditions set forth in this Agreement;

THEREFORE, the Parties agree as follows:

**ARTICLE I: DEFINITION OF TERMS**

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

- 1.2.0 Call Center Hours** means between the hours of 12:00 p.m. until 8:00 p.m. ET, Monday through Friday.
- 1.3.0 Contractor** means successful Offeror.
- 1.4.0 Day(s)** means calendar days unless otherwise noted.
- 1.5.0 DCS or Department** means the New York State Department of Civil Service.
- 1.6.0 DEAS** means Dependent Eligibility Audit Services.
- 1.7.0 Dependent** means the spouse, domestic partner, and unmarried children under nineteen (19) years of age; for PBA–Troopers, PBA–Supervisors, and PIA enrolled in the Empire Plan, unmarried children under twenty-one (21) years of age. Unmarried dependent children who are full-time students at an accredited secondary or preparatory school, college, or other educational institution also are eligible until the first of the following dates: the end of the third month following the month in which they complete course requirements for graduation, or the end of the month in which they reach age twenty-five (25). Unmarried dependent children aged nineteen (19) or over also are eligible if they are incapable of supporting themselves due to mental or physical disability acquired before termination of their eligibility for coverage under Program.
- 1.8.0 Dependent Survivor** means the unremarried spouse, dependent child, or domestic partner who has not acquired another domestic partner, of an Enrollee who died after having had at least ten (10) years of service, who were covered as dependents of the deceased Enrollee at the time of the Enrollee's death and who elect to continue coverage under NYSHIP following the three (3) month extended benefits period.
- 1.9.0 Enrollee** means an employee, who is eligible for coverage under the NYS Health Insurance Plan, or a former Employee or covered Dependent eligible to continue health insurance benefits after separation from active employment.
- 1.10.0 ET** means prevailing Eastern Time.
- 1.11.0 NYS** means New York State.
- 1.12.0 NYSHIP** means the New York State Health Insurance Program.

**1.13.0 OSC** means NYS Office of State Comptroller.

**1.14.0 Participating Agency (PA)** means any unit of local government such as school districts, special districts and district or municipal corporations which elects, with the approval of the President of the Civil Service Commission, to participate in the New York State Health Insurance Program.

**1.15.0 Participating Employer (PE)** means a public authority, public benefit corporation, or other public agency, subdivision or quasi-public organization of the State which elects, with the approval of the President of the Civil Service Commission, to participate in the New York State Health Insurance Program, such as, the NYS Thruway authority and the Dormitory Authority.

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

**1.17.0 Proposal** means the Contractor's Technical Proposal and Cost Proposal, submitted during the course of the procurement process including all responses to supplemental requests for clarification, information, and documentation.

**1.18.0 RFP** means the Request For Proposals, entitled Dependent Eligibility Audit Services, dated June 18, 2008, Exhibit B to this Agreement, including all clarifications and supplemental requests for information made subsequent to the release of the RFP.

**1.19.0 SEHP** means Student Employee Health Plan.

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

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

**2.1.0** This Agreement shall be effective upon the date of its approval by the Office of the State Comptroller of the State of New York. The term of the Agreement shall be for two (2) years, with up to two (2) one (1) year optional extension periods. These optional extension periods are exercisable at the sole discretion of the Department. Pricing during any extension shall be in accordance with Article VIII of this Agreement.

**2.2.0** 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 III: INTEGRATION**

**3.1.0** This Agreement, including all Exhibits, copies of which are attached hereto and incorporated by reference, constitutes the entire Agreement between the Parties. All prior Agreements, representations, statements, negotiations, and undertakings are superseded hereby.

**3.2.0** All Statements made by the DCS shall be deemed to be representations and not warranties.

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

**4.1.0** The Agreement consists of:

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

**4.1.2** Appendix A – Standard Clauses for all New York State Contracts;

**4.1.3** Appendix B – Standard Clauses for all Department of Civil Service Contracts;

**4.1.4** Appendix C – Third Party Connection and Data Exchange Agreement;

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

**4.1.5a** Exhibit A: which includes the MacBride Act Statement; and the Non-Collusive Bidding Certification;

**4.1.5b** Exhibit B: the Request for Proposals entitled, “Dependent Eligibility Audit Services,” dated June 18, 2008 and Exhibit B-1, the official DCS response to questions raised concerning the RFP;

**4.1.5c** Exhibit C: the Contractor's Proposal and Exhibit C-1: the official transcript of the Management Interview and related materials clarifying the contractor's proposal;

**4.1.5d** Exhibit D, the Schedule of Administrative Fees;

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

**4.2.1** First, Appendix A - Standard Clauses for all New York State contracts;

**4.2.2** Second, Appendix B - Standard Clauses for all Department of Civil Service contracts;

**4.2.3** Third, Appendix C – Third Party Connection and Data Exchange Agreement;

**4.2.4** Fourth, any Amendments to the body of the Agreement;

**4.2.5** Fifth, the body of the Agreement;

**4.2.6** Sixth, Exhibit B – the Request for Proposals entitled, "Dependent Eligibility Audit Services," dated June 18, 2008 and Exhibit B-1, the official DCS response to questions raised concerning the RFP; and

**4.2.7** Seventh, Exhibit C – the Contractor's Proposal and Exhibit C-1, the official transcript of the Management Interview and related materials clarifying the Contractor's proposal; and

**4.2.8** Eighth, Exhibit D, the Schedule of Administrative Fees.

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

**ARTICLE V: LEGAL AUTHORITY TO PERFORM**

- 5.1.0** The Contractor represents that it possesses adequate legal authority to perform the Project Services in accordance with the terms and conditions of this Agreement.
- 5.2.0** The Contractor shall maintain appropriate corporate and/or legal authority, which shall include but is not limited to the maintenance of an administrative organization capable of delivering the Project Services in accordance with the Agreement and the authority to do business in the State of New York or any other governmental jurisdiction in which the Project Services are to be delivered.
- 5.3.0** The Contractor shall provide the Department with immediate notice in writing of the initiation of any legal action or suit which relates in any way to the Agreement or which may affect the performance of Contractor's duties under the Agreement.

**ARTICLE VI: PROJECT SERVICES**

- 6.1.0** The Contractor's performance under this Agreement shall commence no later than fifteen days after effective date of this Agreement. The Contractor shall deliver Project Services required pursuant to this Agreement in such a manner so as to comply with the terms and conditions as set forth in this Agreement. Project Services shall be in compliance with the requirements of the RFP and in accordance with the Contractor's approach as set forth in the Contractor's Technical Proposal, including, but no limited to the proposed Project Plan.
- 6.2.0 Project Management Team**
- 6.2.1** The Contractor must maintain an organization of sufficient size with the skills and experience necessary to administer, manage and oversee all aspects of the DEAS during implementation and operation.
- 6.2.2** The Contractor's assigned project management team shall be experienced, accessible and sufficiently staffed to provide timely responses (1 Business Day) to administrative concerns and inquiries posed by the Department, and other users designated by the Department, for the duration of the contract to the satisfaction of the DCS.

- 6.2.3** The Contractor agrees to appoint a Project Manager that will be available full time for the entire term of the DEAS project and who has at least three (3) years experience serving as a Project Manager. The Contractor shall advise the Department immediately if replacement of the Project Manager is contemplated during the term of this project.
- 6.2.4** The Contractor shall obtain written consent from the Department before removing or replacing the Project Manager. Further, the Department shall have the right to ask the Contractor to substitute the Project Manager with another individual of equal or greater relevant experience.
- 6.2.5** The Contractor's assigned project management team shall immediately notify the Department of actual or anticipated events impacting delivery of services to the Department and present options available to minimize or eliminate the impact of those events on the delivery of DEAS.

**6.3.0 Administration of the Amnesty Period and the Dependent Eligibility Audit Process**

The Contractor shall be responsible for all activities related to the audit of dependent eligibility including but not limited to:

**6.3.1 Electronic Transfer of Data**

- 6.3.1a** The Contractor shall receive and transmit enrollment data in a secure electronic format and on a schedule mutually agreed upon by the Contractor and the Department;
- 6.3.1b** The Contractor shall receive and transmit enrollment data in the format required by the Department;
- 6.3.1c** The Contractor shall maintain proper security to protect the confidentiality of enrollee/dependent information on the Contractor's computer system and in the Contractor's physical work environment;
- 6.3.1d** The Contractor shall have a disaster recovery plan in place that is applicable to this project and acceptable to the Department;

**6.3.1e** The Contractor shall image all documentation received from the enrollee and transmit the imaged file to the Department in a standard format (i.e. TIFF). The imaged file shall have an index to identify each dependent record.

### **6.3.2 Eligibility Verification**

**6.3.2a** The Contractor shall have a comprehensive program to administer an Amnesty Period for enrollees to report ineligible dependents. The program shall include the communication of the amnesty period to enrollees, call center support, receiving requests from enrollees to terminate ineligible dependents and the reporting of ineligible dependents to the Department. The Department reserves the right to administer the Amnesty Period itself, separate and apart from the eligibility audit.

**6.3.2b** The Contractor shall have a comprehensive program to verify and track dependent eligibility audit tasks that conform to NYSHIP eligibility rules.

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**6.3.2c** The Contractor shall offer a review process for dependents that are terminated because documentation was not provided by the deadline and who subsequently provide the documentation prior to completion of this project. Receipt of acceptable documentation is required to be reported to the Department in the same format as information received prior to the deadline and be accompanied by the Appeals Report. Such information must be provided to the Department within one (1) business day of receipt by the Contractor.

**6.3.2d** The Contractor shall complete all tasks related to the DEAS process within one (1) year of the last date that enrollment records are sent to the Contractor.

### **6.3.3 Call Center Services**

The Contractor shall be responsible for all customer support and services including but not limited to:

**6.3.3a** Maintenance of a toll free telephone number that enrollees can call with questions regarding the amnesty period, the dependent eligibility audit and required documentation. A call center of sufficient size must be maintained to handle telephone calls in a timely manner. A core staff must be dedicated to service the Department's project; and

**6.3.3b** The call center shall be located in the United States and be staffed with fully trained call center representatives and supervisors, with representatives available, at a minimum, from \_\_\_\_ a.m. to \_\_\_\_ p.m. ET, except for legal holidays observed by the State. The Contractor's call center technology shall have a system to track all inquiries and complaints. The system shall include call type, actions and resolutions. Call center representatives shall be trained to respond to questions, complaints and inquiries including but not limited to dependent eligibility and status of documentation review. Any inquiries that cannot be answered in the initial phone call shall be responded to either by telephone or in writing within 5 business days.

**6.3.3c** The call center shall have a procedure in place for escalating complex and/or difficult calls to more experienced representatives and ultimately supervisory staff.

#### **6.3.4 Communication Material**

The Contractor shall develop customized enrollee communications acceptable to the Department for the amnesty period and the dependent eligibility audit. The Contractor must have the capability to send different enrollee communications for different types of dependents (i.e. dependent student versus spouse). The Contractor shall:

**6.3.4a** Develop draft communications for approval by the Department;

**6.3.4b** Customize enrollee communication material to suit the needs of NYSHIP's diverse population;

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**6.3.4c** Mail the appropriate communication material to each enrollee by First Class Mail with Address Service Requested. Send address notifications received from the United States Postal Service for forwarded mail and notifications for undeliverable mail to the Department, or an agent designated by the Department. Dependent eligibility verification activities are not necessary for dependents of enrollees whose mail is returned undeliverable; such dependent's enrollment shall instead be closed.

## **ARTICLE VII: PERFORMANCE GUARANTEES**

The Contractor acknowledges and agrees that failure to perform the Service Features in such a manner which either meets or exceeds any and/or all of the Performance Guarantee(s) as set forth in this Article and/or fails to make any payment(s) of any such penalty(ies) for such failure to meet any Performance Guarantee(s) does not relieve the Contractor of the performance of the activities, duties and obligations as otherwise set forth in the Agreement. The Contractor shall report to the Department within thirty (30) days of completion of the Project its level of compliance with these guarantees, as specified in this Agreement.

Performance penalty amounts due from the Contractor to the Department for failure to perform any Service Feature at the Guarantee level as set forth above, and audit credit amounts, as determined pursuant to Article XII of this Agreement, shall be made at the time and in such amounts as determined by the Department to be final. Upon such determination, the Department shall notify the Contractor, in writing, and the Contractor shall deduct such amounts from its final payment.

### **7.1.0 Call Center Services Guarantees and Penalty**

#### **7.1.1 Call Center Availability**

**7.1.1a Guarantee:** The Contractor guarantees that the Contractor's toll-free telephone line will be operational and available to callers least \_\_\_\_ % of the Contractor's call center hours calculated for the term of the Contract.

**7.1.1b Penalty:** For each .01 to .50% below the standard of \_\_\_\_% that the Contractor's toll-free telephone line is not operational and available to callers during the Contractor's call center hours calculated for the term of the Contract, the Contractor shall pay the DCS a penalty of \$\_\_\_\_\_.

#### **7.1.2 Call Center Telephone Response Time**

**7.1.2a Guarantee:** The Contractor guarantees that at least \_\_% of incoming calls to the Contractor's toll-free telephone line will be answered by a customer service representative within \_\_ seconds, calculated for the term of the Contract. Response time is defined as the time it takes incoming calls to be answered by a call center representative.

**7.1.2b Penalty:** For each .01 to .50% of incoming calls to the Contractor's toll-free telephone line below the standard of \_\_% that is not answered by a call center representative within \_\_ seconds, calculated for the term of the Contract, the Contractor shall pay the DCS a penalty of \$\_\_\_\_\_.

#### **7.1.3 Telephone Abandonment Rate**

**7.1.3a Guarantee:** The Contractor guarantees that the percentage of incoming calls in which the caller disconnects prior to the call being answered by a Call Center Representative will not exceed \_\_% of total incoming calls, calculated for the term of the Contract.

**7.1.3b Penalty:** For each .01 to .50% of incoming calls to the Contractor's toll-free telephone line in which the caller disconnects prior to the call being answered in excess of the standard of \_\_% of total incoming calls, calculated for the term of the Contract, the Contractor shall pay the DCS a penalty of \$\_\_\_\_\_.

#### **7.1.4 Telephone Blockage Rate**

**7.1.4a Guarantee:** The Contractor guarantees that not more than \_\_% of total incoming calls to the customer service telephone line will be blocked by a busy signal, calculated for the term of the Contract.

**7.1.4b Penalty:** For each .01 to .50% of incoming calls to the Contractor's toll-free telephone that are blocked by a busy signal, in excess of the standard of \_\_\_% of total incoming calls calculated for the term of the Contract, the Contractor shall pay the DCS a penalty of \$\_\_\_.

## **7.2.0 Project Completion Guarantee**

**7.2.1 Guarantee:** The Contractor guarantees that all DEAS services will be completed within one (1) year of the last date that enrollment records are sent to the Contractor.

**7.2.2 Penalty:** For each month or partial month that all DEA services are not completed within one (1) year of the last date that enrollment records are sent to the Contractor, the Contractor shall credit against the total project administrative fee (including postage expense) \_\_\_\_\_ percent of all fees charged under the Contract for amnesty and audit tasks;

## **7.3.0 Project Return on Investment**

**7.3.1 Guarantee:** The Contractor shall guarantee a return on investment of at least 3:1 for the administration of the Amnesty Period and the dependent eligibility audit (Total Savings of at least three times the Total Project Cost (administrative fee plus postage costs). Total Savings shall be calculated by the Department and shall be based on the Plan (Empire, SEHP or HMO) the member is enrolled in at the time of the audit. The Total Savings shall be calculated as follows:

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1. For Empire Plan and SEHP dependents determined to be ineligible by the Contractor, the annualized savings will be calculated as follows: total claims paid for the period 2002 – 2007 for dependents determined to be ineligible divided by the number of months the dependents were enrolled in the Empire Plan or SEHP during the 2002 – 2007 period times 12 months. This calculation does not include a reduction to either the claims paid or the enrolled months,

based on the dependent's actual eligibility, for any part of the 5-year period.

Note: for dependent children age 19 (or age 21 if enrolled in the Empire Plan for PBA or PIA) and older who are not disabled dependents, the average of total claims paid will exclude claims paid and months enrolled in the Empire Plan or SEHP up to age 18 (or age 20 if enrolled in the Empire Plan for PBA or PIA).

**Plus**

2. For HMO dependents, annual savings based on difference between Family and Individual 2008 Net Premium when dependents determined not eligible cause an enrollee's coverage to change from Family to Individual.

**Plus**

3. Annual savings of Medicare Part B Premium reimbursement paid for Medicare dependents determined not eligible by the Offeror based on the basic 2008 monthly Medicare Part B Premium amount.

**7.3.2 Penalty:** The Contract shall guarantee a return on investment of at least 3:1. for the administration of the Amnesty Period and the dependent eligibility audit. Total Savings of at least three times the Total Project Cost (administrative fee plus postage). For Total Savings below three times the Total Project Cost, the Contractor shall credit against the Total Project Cost the difference between three times the total administrative cost and the actual total savings, not to exceed the total fees charged under the Contract.

**ARTICLE VIII: PAYMENT FOR SERVICES RENDERED**

**8.1.0** The Contractor shall be paid for services rendered pursuant to Exhibit D of this Agreement. The Contractor shall not charge to the Project any fees in excess of the flat fees contained in the Schedule of Administrative Fees (Exhibit D)

**8.2.0** The Contractor shall be paid twenty percent (20%) of the total administrative fee for the Project within 45 days of the first enrollment records being sent to the Contractor.

**8.3.0** The Contractor shall be paid the remaining fee agreed upon with the Department according to the following schedule, which assumes the Project will take one (1) year to complete:

- 20% of the flat fee within 90 days of the first enrollment records being sent to the Contractor;
- 20% of the flat fee within 180 days of the first enrollment records being sent to the Contractor;
- 20% of the flat fee within 270 days of the first enrollment records being sent to the Contractor;
- The final 20% of the flat fee, adjusted for any performance guarantee penalties, will be paid within 60 days of completion of the Project, to the Department's satisfaction.

The Department reserves the right to adjust the payment schedule if the projected time to complete the project changes significantly.

**8.4.0** The Contractor shall not charge to the Project any fees in excess of the flat fees contained in the Schedule of Administrative Fees (Exhibit D).

**8.5.0** All of the prices, terms, warranties and benefits granted by the Contractor herein are comparable to or better than the equivalent terms being offered by the Contractor to other customers using similar scope and volume of services. If, during the course of this Agreement, the Contractor enters into arrangements with any other customers providing benefits which are equal to or greater than those benefits to be provided under this Agreement at more favorable terms, this Agreement shall thereupon be deemed amended to provide the same to the DCS.

## **ARTICLE IX: DATA SHARING AND OWNERSHIP**

**9.1.0** All enrollment and other data related to the Project is the property of the State. Upon the request of the Department, the Contractor shall share appropriate enrollment data with the Department's consultants. Except as directed by a court of competent

jurisdiction, or as necessary to comply with applicable New York State or federal law, or with the written consent of the Enrollee, the Contractor shall not share, sell, release, or make the data available to third parties in any manner without the prior consent of the DCS. The provision shall survive the expiration or termination of this Agreement.

## **ARTICLE X: REPORTS AND ENROLLMENT FILES**

The Contractor shall work with the Department to develop reports acceptable to the Department for the amnesty period and/or the dependent eligibility audit that include, but are not limited to, the measurement of the Contractor's efficiency and effectiveness, adherence to contract requirements and measurement of performance guarantees. Reporting will be at intervals mutually agreed upon by the Department and the Contractor. Reporting, at a minimum, must cover:

1. **Verification Status Summary Report** (for each letter mailed: number letters mailed, number responders, number amnesty requests, number complete documentation received, number incomplete documentation received, number non-responders, number returned-mail).
2. **Call Center Statistics** (A weekly report reporting the call center activity on daily basis including, but not limited to the number of calls, average on-hold time, etc.).
3. **Weekly Management Summary Report** of progress of project and milestone met.
4. **Master File of Final Eligibility Status Determination Detail Report** (enrollee information, dependent information, resolution – amnesty, eligibility confirmed, eligibility not confirmed).
5. **Report of Final Eligibility Status Determination Detail Report** by agency.
6. **Appeals Report** (number of appeals, number accepted, number rejected).
7. **File of all Imaged Eligibility Documentation** received and enrollee correspondence.

8. **Guarantee Report** to summarize Offeror's compliance with all Contract guarantees (with the exception of the Return on Investment Guarantee, which will be calculated by the Department).
9. **Final Project Report** summarizing project outcome and suggestions to improve the Department's management of dependent eligibility.

## **ARTICLE XI: TERMINATION OF CONTRACT**

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

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

**11.3.0** The Agreement may be terminated if the Department deems that termination would be in the best interest of the State provided that the Department shall give written notice to the Contractor not less than thirty (30) Days prior to the date upon which termination shall become effective, such notice to be made via registered or certified mail, return receipt requested or hand delivered. The date of such notice shall be deemed to be the date of postmark in the case of mail or the date of hand delivery. In the case of termination under this Section 11.3.0, the Department agrees to pay the Contractor for reasonable and appropriate expenses accrued or incurred in good faith. The Contractor, on its part, agrees to incur no new obligations after receipt of notification of termination and, after consultation with the Department, to cancel such outstanding obligations as the Contractor deems appropriate in the exercise of sound business judgment.

- 11.4.0** The Agreement may be deemed terminated immediately upon the filing of a petition in bankruptcy or insolvency unless dismissed within thirty (30) Days, by or against the Contractor. Such termination shall be immediate and complete, without termination costs or further obligations by the Department to the Contractor except for the payment of outstanding vouchers.
- 11.5.0** Should the Department reasonably determine that State funds are unavailable; the Department shall deem the Agreement terminated immediately. The Department agrees to give thirty (30) Days notice to the Contractor in the event of termination under this Section 11.5.0. If the initial notice is oral notification, the Department shall follow this up immediately with written notice. The Department shall be obligated to pay the Contractor only for the reasonable and appropriate expenditures made and obligations incurred by the Contractor in accordance with the Agreement until such time as notice of termination is received either orally or in writing by the Contractor from the Department.
- 11.6.0** In the event of termination for any reason, the Contractor shall not incur new obligations for the terminated portion. The Contractor agrees, after consultation with the Department, to cancel such outstanding obligations as the Contractor deems appropriate in the exercise of sound business judgment.
- 11.7.0** 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 assets hereof, tangible, and intangible, as may be necessary for the orderly, non-disrupted business continuation of each Party.

## **ARTICLE XII: AUDIT AUTHORITY**

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

- 12.1.0** The Contractor acknowledges that the Department has the authority to conduct performance audits of the Contractor's delivery of Project Services in accordance with the Agreement and any applicable State and federal statutory and regulatory authorities.

**12.2.0** The Contractor shall maintain and make available documentary evidence necessary to perform such reviews. Documentation maintained and made available by the Contractor may include, but is not limited to, source documents, procedure manuals and system access.

### **ARTICLE XIII: CONFIDENTIALITY**

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

**13.1.0** All enrollment records relating to the Agreement are confidential and shall be used by the Contractor solely for the purpose of carrying out its obligations under the Agreement, for measuring the performance of the Contractor in accordance with the performance guarantees of the Agreement, and for providing the DCS with material and information as may be specified elsewhere in this Agreement.

**13.2.0** Except as directed by a court of competent jurisdiction, or as necessary to comply with applicable New York State or federal law, or with the written consent of the Enrollee, no records may be otherwise used or released to any party other than the DCS by the Contractor, 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 termination of the Agreement.

**13.3.0** The Contractor, 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 Contractor through its performance under the Agreement, with particular emphasis on such information relating to Enrollees.

**13.4.0** The Contractor shall be responsible for assuring that any Agreement between the Contractor and any of its officers, employees, agents, consultants and/or sub-contractors

contains a provision which strictly conforms to the various confidentiality provisions of this Agreement.

- 13.5.0** The Contractor shall promptly advise the DCS of all requests made to Contractor for information regarding the performance of services under this Agreement including, but not limited to, requests for any material and information provided by the DCS.

**ARTICLE XIV: USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION**

- 14.1.0** For purposes of this Article, the term “Protected Health Information” (“PHI”) means any information, including enrollment eligibility information collected from an individual, that relates to the past, present, or future eligibility of an individual, that identifies the individual, or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual. Within the context of this Agreement, PHI may be received by the Contractor from the Department or may be created or received by the Contractor on behalf of the Department. All PHI received or created by the Contractor as a consequence of its performance under this Agreement is referred to herein collectively as “DCS’ PHI”.
- 14.2.0** The Contractor acknowledges that the DCS administers on behalf of New York State several “health plans” as that term is defined in HIPAA’s implementing regulations at 45 CFR 160.103, and that each of those group health plans consequently is a “covered entity” under HIPAA. These group health plans include NYSHIP, which encompasses the Empire Plan as well as participating health maintenance organizations; the Dental Plan and the Vision Plan. In this capacity, DCS is responsible for the administration of these “covered entities” under HIPAA. The Contractor further acknowledges that the Contractor is a HIPAA “business associate” of DCS as a consequence of the Contractor’s provision of services to and/or on behalf of DCS within the context of the Contractor’s performance under this Agreement, and that the Contractor’s provision of such services may involve the disclosure to the Contractor of individually identifiable health information from DCS or from other parties on behalf of DCS, and also may involve the Contractor’s disclosure to DCS of individually identifiable health information as a consequence of the services performed under this Agreement.

- 14.3.0** *Permitted Uses and Disclosures of DCS' PHI:* The Contractor may use and/or disclose DCS' PHI solely in accordance with the terms of this Agreement. [45 CFR §164.504(e)(2)(i)]. In addition, the Contractor may use DCS' PHI to provide data aggregation services relating to the health care operations of DCS. [45 CFR §164.504(e)(2)(i)(B)]. Further, the Contractor may use and disclose DCS' PHI for the proper management and administration of the Contract if such use is necessary for the Contractor's proper management and administration or to carry out the Contractor's legal responsibilities, or if such disclosure is required by law or the Contractor obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Contractor or any instances of which it is aware in which the confidentiality of the information has been breached. [45 CFR 164.504(e)(2)(i)(A) and 164.504(e)(4)(i) and (ii)].
- 14.4.0** *Nondisclosure of DCS' PHI:* The Contractor shall not use or further disclose DCS' PHI otherwise than as permitted or required by this Agreement or as otherwise required by law. [45 CFR §164.504(e)(2)(ii)(A)].
- 14.5.0** *Safeguards:* The Contractor shall use appropriate, documented safeguards to prevent the use or disclosure of DCS' PHI otherwise than as provided for by this Agreement. [45 CFR §164.504(e)(2)(ii)(B)]. The Contractor shall maintain a comprehensive written information security program that includes administrative, technical, and physical safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities, to reasonably and appropriately protect the confidentiality, integrity and availability of any electronic PHI that it creates, receives, maintains, or that it transmits on behalf of the DCS pursuant to this Agreement.
- 14.6.0** *Reporting of Disclosures:* The Contractor shall report to DCS any use or disclosure of DCS' PHI otherwise than as provided for by this Agreement of which the Contractor becomes aware. [45 CFR §164.504 (e)(2)(ii)(C)]. Further, the Contractor shall report to DCS any security incident of which it becomes aware. "Security incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information, or interference with system operations in an information system.

- 14.7.0** *Associate's Agents:* The Contractor shall ensure that any agents or sub-contractors to whom it provides DCS' PHI, whether received from DCS or created or received by the Contractor on behalf of DCS, agree to the same restrictions and conditions that apply to the Contractor with respect to DCS' PHI under this Agreement. [45 CFR §164.504(e)(2)(ii)(D)].
- 14.8.0** *Availability of Information to DCS:* The Contractor shall make available to DCS such information as DCS may require to fulfill DCS' obligations to provide access to, to provide a copy of, and to account for disclosures with respect to DCS' PHI in accordance with HIPAA and its implementing regulations, including, but not limited to, 45 CFR Sections 164.524 and 164.528. [45 CFR §164.504(e)(2)(ii)(E) and (G)].
- 14.9.0** *Amendment of DCS' PHI:* The Contractor shall make DCS' PHI available to DCS as DCS may require to fulfill DCS' obligations to amend individuals' PHI pursuant to HIPAA and its implementing regulations, including, but not limited to, 45 CFR Section 164.526. The Contractor shall, as directed by DCS, incorporate any amendments to DCS PHI into copies of such DCS PHI maintained by the Contractor. [45 CFR §164.504(e)(2)(ii)(F)].
- 14.10.0** *Internal Practices:* The Contractor shall make its internal practices, books, and records relating to the use and disclosure of DCS' PHI, whether received from DCS or created or received by the Contractor on behalf of DCS, available to the Secretary of the U.S. Department of Health and Human Services for purposes of determining the DCS' compliance with HIPAA and its implementing regulations. [45 CFR §164.504(e)(2)(ii)(H)].
- 14.11.0** *Disposition of DCS' PHI:* At the time this Agreement is terminated, the Contractor shall, if feasible, return or destroy all of DCS' PHI, whether received from DCS or created or received by the Contractor on behalf of DCS, that the Contractor still maintains in any form and retain no copies of such information. Alternatively, if such return or destruction is not feasible, the Contractor shall extend indefinitely the protections of this Agreement to the information and shall limit further uses and disclosures to those purposes that make the return or destruction of the DCS PHI infeasible. [45 CFR §164.504(e)(2)(ii)(I)].

**14.12.0** *Termination under HIPAA:* This Agreement may be terminated by DCS at DCS' discretion if DCS determines that the Contractor has violated a material term of this Article or of the Agreement with respect to the Contractor's obligations under this Article. [45 CFR §164.504(e)(2)(iii)].

Contractor: \_\_\_\_\_

Contract Number:     C000587    

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

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE**

**NANCY G. GROENWEGEN  
COMMISSIONER**

By: \_\_\_\_\_

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

*[Insert Name of Contractor]*

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

By \_\_\_\_\_

Name: \_\_\_\_\_

Title \_\_\_\_\_

STATE OF            )  
                          ) ss:  
COUNTY OF        )

On the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me personally came \_\_\_\_\_, 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 \_\_\_\_\_ of \_\_\_\_\_ the corporation or organization described in and which executed the above instrument; and that (s)he signed his/her name thereto.

\_\_\_\_\_  
NOTARY PUBLIC

**Approved as to form:**

**ANDREW M. CUOMO  
ATTORNEY GENERAL**

By: \_\_\_\_\_

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

**Approved:**

**THOMAS P. DINAPOLI  
STATE COMPTROLLER**

By: \_\_\_\_\_

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