SECTION VII: CONTRACT PROVISIONS

AGREEMENT #C000XXX

THIS Agreement is entered into by and between New York State Insurance Fund, an agency of the State of New York, having its principal place of business at 199 Church Street, New York, New York 10007 (hereinafter referred to as "FUND" and _____("Contractor"), 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, on [TBD], the Department of Civil Service issued a Request for Proposal (RFP) entitled, "Pharmacy Benefit Services for The Empire Plan, Excelsior Plan, Student Health Plan, and New York State Insurance Fund Workers' Compensation Prescription Drug Programs," to secure the services of a qualified organization to provide Program Services as defined in the RFP; and

WHEREAS, after thorough review and evaluation by the State 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 FUND, in reliance upon the expertise of the Contractor, desires to engage the Contractor to deliver the Program Services, pursuant to the terms and conditions set forth in this Agreement;

THEREFORE, the Parties agree as follows:

ARTICLE I: DEFINITION OF TERMS

1.1.0 **Affiliate** means a person or organization which, through stock ownership or any other affiliation, directly, indirectly, or constructively controls another person or organization, is controlled by another person or organization, or is, along with another person or organization, under the control of a common parent.

1.2.0 **AWP** means the [source identified in Exhibit C, Contractor's Proposal, of this Agreement,] AWP Price for the eleven (11) digit NDC of the drug dispensed as of the date the Prescription was filled, unless the Parties mutually agree in writing to utilize a different source for AWP information.

1.3.0 **Brand Drug** means a Prescription drug sold under a trade name other than its chemical name that is manufactured and marketed by a single manufacturer (or single group of manufacturers pursuant to agreement among the manufacturers) where the manufacturer holds or held a patent protecting the active ingredient from generic competition. The classification of a drug as brand or other category shall be based on indicators provided by the drug pricing reporting service that is used by the PBM, as updated regularly.

1.4.0 **Business Day(s)** means every Monday through Friday, except for days designated as business holidays by the Contractor and approved as such by the FUND prior to January 1 of each Calendar Year.

1.5.0 **Business Holiday(s)** means days designated by the Contractor as Business Holidays and approved as such by the FUND prior to January 1 of each Calendar Year.

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

1.7.0 **Call Center Hours** means 24 hours a Day, 365 days a year.

1.8.0 **Claimant** means an injured employee who sustains an at-injury accident (loss) while in the employ of individuals or companies that have Workers' Compensation Insurance policies with NYSIF.

1.9.0 **Compound Drug(s)/Medication(s) or Compounded Drug(s)/Medication(s)** means a drug with two or more ingredients (solid, semi-solid or liquid), at least one of which is a Covered Drug with a valid NDC requiring a Prescription for dispensing, combined together in a method specified in a Prescription issued by a medical professional. The end result of this combination must be a Prescription medication for a specific patient that is not otherwise commercially available in that form or dose/strength from a single manufacturer. The Prescription must identify the multiple ingredients in the Compound, including active ingredient(s), diluents(s),

ratios or amounts of product, therapeutic use, and directions for use. The act of compounding must be performed or supervised by a licensed Pharmacist. Any commercially available product with a unique assigned NDC requiring reconstitution or mixing according to the FDA approved package insert prior to dispensing will not be considered a Compound Prescription by the NYSIF Program.

1.10.0 **Contractor** means the successful Offeror selected as a result of the evaluation of Contractors' Proposals submitted in response to Exhibit B, the Request for Proposals entitled "Pharmacy Benefit Services for The Empire Plan, Excelsior Plan, Student Employee Health Plan and New York State Insurance Fund Workers' Compensation Prescription Drug Program and who executes a contract with the FUND to provide Program Services.

1.11.0 **Controlled Drug** means drugs designated by Federal Law or New York State law as a Class I, II, III, IV or V substance. A Controlled Drug includes but is not limited to: some tranquilizers; stimulants; and pain medications.

1.12.0 **Covered Drug(s)** means medically necessary medically necessary and appropriate drugs that are causally related to the loss.

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

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

1.15.0 **Dedicated Call Center** means a group of Customer Service Representatives trained and capable of responding to a wide range of questions, complaints, and inquiries specific to the NYSIF Program. The Customer Service Representatives are dedicated to the NYSIF Program and do not work on any other accounts.

1.16.0 **Designated Specialty Pharmacy** means all facilities owned, operated, subcontracted or otherwise affiliated with the Contractor or any Key Subcontractor of the Contractor to provide certain Specialty Drugs/Medications. All facilities must meet all legal and contractual requirements as set forth in the Agreement.

1.17.0 **Designated Specialty Pharmacy Hard Edit** means a Network Pharmacy claims adjudication edit that will result in denial of the claim for a Specialty Drug/Medication under the Specialty Pharmacy Process after the Grace Period for Specialty Drugs has elapsed.

1.18.0 **Designated Specialty Pharmacy Passive Edit** means a Network Pharmacy claims adjudication edit that will prompt processing of the claim at the Designated Specialty Pharmacy but will permit continued processing and coverage for a Specialty Drug/Medication at the Network Pharmacy under the Specialty Pharmacy Process after the Grace Period for Specialty Drugs has elapsed.

1.19.0 **Discounted Ingredient Cost(s)** means the cost to the NYSIF Program for a specific drug or drugs dispensed to a Claimant after the Contractor has applied the appropriate discount exclusive of any associated dispensing fee(s), other costs.

1.20.0 **Employee** means any person defined as an Employee as defined in 4 NYCRR Part 73, as amended, or as modified by collective bargaining agreement.

1.21.0 **Employer** means the State of New York in all its branches, departments and agencies..

1.22.0 **ET** means prevailing Eastern Time.

1.23.0 **Final Paid Claim** means a claim processed and paid by the Contractor for a Prescription drug provided to a Claimant, including but not limited to, claims for Prescriptions filled at a retail Pharmacy or through the Mail Service Pharmacy Process or the Specialty Pharmacy Process. A claim that is denied prior to processing is not considered a Final Paid Claim. In addition, a claim that is processed and paid but is subsequently voided, reversed, or otherwise adjusted is not a Final Paid Claim. Zero balance claims are considered Final Paid Claims.

1.24.0 **First Fill** means a Claimant's initial or very first dispensing of a Specialty Drug/Medication covered under the NYSIF Program's Specialty Pharmacy Program.

1.25.0 **FUND or NYSIF** means the New York State Insurance Fund.

1.26.0 **FUND or NYSIF Program** means the Workers' Compensation Pharmacy Benefits Management program administered by the New York State Insurance Fund.

1.27.0 **FUND or NYSIF Program MAC List** means the Programs' specific Maximum Allowable Cost (MAC) List managed by the Contractor to set the maximum price the Program shall be charged and the dispensing retail Network Pharmacy shall be paid on a pass through basis for the Ingredient Cost of a drug required to be included on the Programs MAC List.

1.28.0 **GCN** means Generic Code Number as assigned by First Data Bank.

1.29.0 **Generic Drug** means a prescription drug sold under its chemical name or drug sold under a name other than its chemical name by a manufacturer other than the manufacturer that held the original patent for the active ingredient in the drug that is therapeutically equivalent and interchangeable with drugs having the same quantity of active ingredient(s) and approved by the U.S. Food and Drug Administration. The term Generic Drug shall include "authorized generics" marketed by or in conjunction with the manufacturer that is the holder of the original patent for the active ingredient of the drug and drugs sold either after patent protection has expired or those drugs without patent protection. Any drug approved through an FDA Generic Drug approval process, including any FDA approval process established for approving generic equivalents of brand name biologic drugs, shall be classified as a Generic Drug.

1.30.0 **Grace Period for Specialty Drugs** means the period of time during which enrollees may receive one fill of a Specialty Drug/Medication at a Pharmacy other than the Designated Specialty Pharmacy.

1.31.0 **Guaranteed Discount(s)** means the Contractor's fixed, contracted, guaranteed Ingredient Cost discounts for Brand Drugs expressed as a percent off of AWP dispensed through the Mail Service Pharmacy Process. For Specialty Drug/Medications dispensed through the Specialty Pharmacy Program, Guaranteed Discounts means the Contractor's fixed, contracted, guaranteed Ingredient Cost discounts for Brand and Generic drugs expressed as a percent off of AWP.

1.32.0 **Guaranteed Maximum Dispensing Fee(s)** **Guaranteed Maximum Dispensing Fee(s)** represents the quoted dispensing fee(s) the Contractor guarantees that the actual average dispensing fee assessed under Pass Thru Pricing will not exceed. This Guaranteed Maximum Dispensing Fee(s) is applicable to the NYSIF Program for Generic, Brand and Compound Drugs, calculated separately, for prescriptions dispensed by Retail Network Pharmacies.

1.33.0 **Guaranteed Minimum Discount(s)** means the guaranteed Ingredient Cost discount(s) as expressed as a percent off of the aggregate AWP and is applicable to Generic and Brand Drugs, separately, dispensed through Retail Pharmacy Network as well as Generic Drugs dispensed through the Mail Service Pharmacy Process.

1.34.0 **Hard Edit** means a Network Pharmacy claims adjudication edit that will result in denial of the claim.

1.35.0 **Ingredient Cost(s)** means the cost to the NYSIF Program for a specific drug, or drugs dispensed to a Claimant exclusive of any associated dispensing fee(s), other costs, through application of the NYSIF Program's Lesser of Logic.

1.36.0 **Instant Enrollment/"Short Fill" Service** means allowing injured workers of NYSIF policy holders immediate acceptance by any pharmacy in the Contractor's network in order to provide a limited number of cost-effective medication benefits.

1.37.0 **Key Subcontractor** means those vendors with whom the Contractor subcontracts to provide Program Services and incorporates as a part of the Contractor's Project Team.

1.38.0 **(Amended April 4, 2012)** **Limited Distribution Drug** means a Specialty Drug/Medication whose distribution is limited by the manufacturer to select Pharmacies and as a result of this restriction is not available to be dispensed from the Designated Specialty Pharmacy and/or Mail Order Pharmacy.

1.39.0 **Mail Service Pharmacy Process** means the method that the Contractor employs to accept, process, and dispense Prescriptions for Covered Drugs to Claimants through the mail or other home delivery service, excluding any drug eligible under the Specialty Pharmacy Process. For those DCS employee groups not participating in the Specialty Pharmacy Process, the Mail Service Pharmacy Process means the method that the Contractor employs to accept, process, and dispense Prescriptions for Covered Drugs to Claimants through the mail or other home delivery service including any drug that could be classified as a Specialty Drug/Medication, or that require special preparation or handling, using one or more Mail Service Pharmacy Process Facilities or other entities approved as distribution channels for dispensing Limited Distribution Drugs to Claimants through the Mail Service Pharmacy Process. Prescriptions are considered to be submitted through the Mail Service Pharmacy Process if they are submitted by phone, fax, internet, e-prescribing or mail to any Mail Service Pharmacy Process Facility. All Prescriptions

filled through the Mail Service Pharmacy Process shall be processed in strict accordance with the provisions of this Agreement including all pricing provisions related to the Mail Service Pharmacy Process. Prescriptions dispensed through the Retail Pharmacy Network and delivered to the Claimant through the mail shall not be considered to have been filled through the Mail Service Pharmacy Process provided the Claimant or their Physician presented the Prescription directly to the dispensing Network Pharmacy. The Contractor or its Key Subcontractor will not refer a Claimant or their Physician to a retail Pharmacy without also making the Claimant aware of the Mail Service Pharmacy Process.

1.40.0 **Mail Service Pharmacy Process Facility(ies)** means all facilities owned, operated, subcontracted or otherwise affiliated with the Contractor or any Key Subcontractor of the Contractor capable of being utilized by the Contractor in the Mail Service Pharmacy Process, including any mail service intake facility. For those DCS employee groups participating in the Specialty Pharmacy Process, the Designated Specialty Pharmacy is not considered a Mail Service Pharmacy Process Facility. All facilities must meet all legal and contractual requirements.

1.41.0 **Maximum Allowable Cost** means the maximum price the NYSIF Program shall be charged and the dispensing retail Network Pharmacy shall be paid on a pass-through basis for the Ingredient Cost of a drug required to be included on the NYSIF Programs' MAC List managed by the Contractor.

1.42.0 **Medically Necessary Drug** means any drug which, as determined by the Contractor, is: (i) provided for the diagnosis or treatment of a medical condition; (ii) appropriate for the symptoms, diagnosis or treatment of a medical condition; (iii) within the standards of generally accepted health care practice; and (iv) not used for cosmetic purposes.

1.43.0 **Medical Professional(s)** means a Doctor of Medicine (M.D.) or a Doctor of Osteopathy (D.O.) licensed without limitation or restriction to practice medicine. For benefits provided in the NYSIF Program, and for no other purpose, Physician also means a Doctor of Dental Surgery (D.D.S.), a Doctor of Dental Medicine (D.D.M), a Podiatrist and any other health care professional licensed to prescribe medication, when he or she is acting within the scope of his or her license.

1.44.0 **Narrow Therapeutic Index (NTI) Drugs** means a drug that small variances in blood levels can cause changes in the effectiveness or toxicity of that drug.

1.45.0 **NDC** means the National Drug Code number assigned to a pharmaceutical product obtained by the manufacturer of the product through a U.S. Food and Drug Administration administered process.

1.46.0 **Network Pharmacy** means a Pharmacy, other than those Pharmacies meeting the definition of Mail Service Pharmacy Process Facilities or a Designated Specialty Pharmacy, which has entered into an agreement with the Contractor, or any Affiliate or Key Subcontractor of the Contractor, to provide Covered Drugs to Claimants, including limited distribution or Specialty Drugs. The Contractor's records shall be conclusive as to whether a Pharmacy has a Network Pharmacy agreement in effect on the date a drug is dispensed.

1.47.0 **Non-Network Pharmacy** means any Pharmacy, other than a Network Pharmacy, a Mail Service Pharmacy Process Facility or a Designated Specialty Pharmacy, which has not entered into an agreement with the Contractor, or any Affiliate or Key Subcontractor of the Contractor, to provide Covered Drugs to Claimants.

1.48.0 **Non-Preferred Drug** means an FDA approved prescription drug that is covered by the NYSIF Program, but is not included on the Contractor's and/or its Key Subcontractor's Preferred Drug.

1.49.0 **NYS** means New York State.

1.50.0 **Over-the-Counter Drug (OTC)** means a drug approved by the FDA, which has been determined to be safe and effective for use by the general public without a doctor's Prescription.

1.51.0 **Pass-through Pricing** means the NYSIF Program is charged the same Ingredient Cost and/or dispensing fee paid to the dispensing Network Pharmacy or Mail Service Pharmacy for the Generic, Brand or Compound Drug dispensed.

1.52.0 **Pharmacist** means a person who is legally licensed to practice the profession of Pharmacy. He or she must regularly practice such profession within the scope of their license.

1.53.0 **Pharmacy or Pharmacies** means any establishment, which is registered as a Pharmacy with the appropriate State licensing agency or is a Veterans Affairs Hospital Pharmacy, and regularly dispenses medications that require a Prescription from a Physician.

1.54.0 **Pharmacy Benefit Services or Program Services** means all of the services to be provided by the Contractor as set forth in this RFP.

1.55.0 **Pharmacy Submitted Ingredient Cost or Pharmacy Submitted Pricing or Submitted Cost** means the value entered by the Pharmacy in field 409, 'Ingredient Cost Submitted' of Telecommunication Standard Version 5.1 issued by the National Council for Prescription Drug Programs, Inc. For purposes of adjudication of Compound claims the value shall be no more than the total AWP of all ingredients in the Compound.

1.56.0 **Pharma Revenue** means any and all revenues generated from agreements between pharmaceutical manufacturers and the Contractor, or any Affiliate or Key Subcontractor of the Contractor, which relate to NYSIF Program utilization and/or Pharmacy benefit management services provided under this Agreement. Such revenues include revenue described by any name, but not limited to, revenues described as: formulary rebates, market share rebates, administrative fees, AWP caps or by any other name.

1.57.0 **Physician** means a Doctor of Medicine (M.D.) or a Doctor of Osteopathy (D.O.). He or she must be legally licensed without limitations or restrictions, to practice medicine. For benefits provided in the NYSIF Program, and for no other purpose, Physician also means a Doctor of Dental Surgery (D.D.S.), a Doctor of Dental Medicine (D.D.M), a Podiatrist and any other health care professional licensed to prescribe medication, when he or she is acting within the scope of his or her license.

1.58.0 **Preferred Brand Drug** means a FDA approved brand name prescription drug that is included on the Preferred Drug List developed by the Contractor for the NYSIF Program.

1.59.0 **Preferred Drug List or PDL** means a list of FDA approved brand name and generic prescription drugs developed by the Contractor for the Program.

1.60.0 **Prescription/Prescription Order** means the written or oral request for drugs issued by a Physician duly licensed to make such a request in the ordinary course of his or her professional practice.

This order must be written in the name of the person for whom it is prescribed or be an authorized refill of that order.

1.61.0 **Program Services or Pharmacy Benefit Services** means all of the services to be provided by the Contractor as set forth in this Agreement.

1.62.0 **Program Team** means the Contractor and those Key Subcontractors, if any, utilized by the Contractor who collectively undertake and perform the Program Services which are the subject of the Agreement.

1.63.0 **Proposal** means the Contractor's Administrative Proposal, Technical Proposal and Cost Proposal, including all responses to supplemental requests for clarification, information, or documentation, submitted during the course of the Procurement.

1.64.0 **Renewal Date** means January 1, 2015, and annually thereafter up to and including January 1, 2018.

1.65.0 **Retail Pharmacy Network** means the Contractor's credentialed network of participating independent, chain Pharmacies, and specialty Pharmacies contracted to deliver services to Claimants.

1.66.0 **RFP or Procurement** means the Request for Proposals entitled "Pharmacy Benefit Services for The Empire Plan, Excelsior Plan, Student Employee Health Plan and the New York State Insurance Fund Workers' Compensation Prescription Drug Programs."

1.67.0 **Specialty Drugs/Medications** means drugs that treat rare disease states; drugs requiring special handling, special administration, or intensive patient monitoring/testing; biotech drugs developed from human cell proteins and DNA, targeted to treat disease at the cellular level; or, other drugs used to treat patients with chronic or life threatening diseases identified as specialty medications through the mutual agreement of the parties.

1.68.0 **Specialty Pharmacy Process** means the method that the Contractor employs to accept, process, and dispense Prescriptions for Covered Drugs to Claimants through the Designated Specialty Pharmacy or a Limited Distribution Drug Pharmacy. Prescriptions are considered to be submitted through the Specialty Pharmacy Process if they are a Limited Distribution Drug submitted directly to the Limited Distribution Drug Pharmacy, or if they are a Specialty Drug/Medication submitted

directly to the Designated Specialty Pharmacy, by phone, fax, internet, e-prescribing or mail. All Prescriptions filled through the Specialty Pharmacy Process shall be processed in strict accordance with the provisions of the contract to be agreed upon by the FUND and the Contractor.

1.69.0 **State** means the New York State Insurance Fund acting in its statutory authority as the administrator of the NYS Workers' Compensation Pharmacy Benefits Management Program

1.70.0 **Therapeutically Equivalent** means drugs that can be expected to produce essentially the same therapeutic outcome and toxicity.

1.71.0 **Usual and Customary (U&C)** means the retail price charged to the general public as submitted by the dispensing Pharmacy during claims processing.

1.72.0 **WCB** means the New York State Workers' Compensation Board.

ARTICLE II: AGREEMENT DURATION AND AMENDMENTS

2.1.0 This Agreement shall be subject to and effective upon the approval of the New York State Attorney General's Office ("AG") and the NYS Office of the State Comptroller ("OSC"). The term of the Agreement shall include an implementation period followed by five (5) years of Program Services. It is the FUND's intent that this implementation period shall begin on or around August 1, 2012, upon OSC approval of the Agreement, with all other contractual responsibilities to begin on January 1, 2014, through and including December 31, 2018, and subject to the termination provisions contained herein.

2.2.0 The Agreement is subject to amendment(s) only upon mutual consent of the Parties, reduced to writing and approved by the AG and the OSC.

2.3.0 Upon termination of this Agreement the FUND shall have the right to award a new contract to another Contractor.

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 FUND 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 FUND Contracts;

4.1.4 Appendix C – Third Party Connection and Data Sharing Agreement;

4.1.5 Appendix D – Participation by Minority Group Members and Women With Respect to State Contracts: Requirements and Procedures;

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

4.1.6a Exhibit A: which includes: the MacBride Act Statement; and the Non-Collusive Bidding Certification;

4.1.6b Exhibit B: the Request for Proposals entitled "Pharmacy Benefit Services for The Empire Plan, Excelsior Plan, Student Employee Health Plan, and New York State Insurance Fund Workers' Compensation Prescription Drug Programs," dated February 22, 2012, and Exhibit B-1, the official Procuring Agencies response to questions raised concerning the RFP;

4.1.6c 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;

4.1.6d Exhibit D: Specialty Pharmacy Program Dispensing Fees

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

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

4.1.7b Second, Appendix B – Standard Clauses for All FUND Contracts;

4.1.7c Third, Appendix D – Participation by Minority Group Members and Women With Respect to State Contracts: Requirements and Procedures;

4.1.7c Fourth, any Amendments to the body of the Agreement;

4.1.7d Fifth, the body of the Agreement;

4.1.7e Sixth, Exhibit B, the Request for Proposals entitled "Pharmacy Benefit Services for The Empire Plan, Excelsior Plan, Student Employee Health Plan and New York State Insurance Fund Prescription Drug Programs," dated February 21, 2012 and Exhibit B-1, the official Procuring Agencies response to questions raised concerning the RFP;

4.1.7f 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

4.1.7g Eighth, Exhibit E, Specialty Pharmacy Program Dispensing Fees;

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

ARTICLE V: LEGAL AUTHORITY TO PERFORM

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

5.2.0 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 Program Services in accordance with the Agreement and the authority to do business in the State of New York or any other governmental jurisdiction in which the Program Services are to be delivered.

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

ARTICLE VI: PROGRAM SERVICES

6.1.0 The Contractor shall provide all of the Program Services as set forth herein this Article VI of the Agreement for the entire term of the Agreement. All Program Services shall be provided in accordance with the New York State Workers' Compensation Law and its implementing regulations, and other NYS and Federal Law as may be applicable. In addition, the Contractor shall deliver the Program Services in such a manner so as to comply with all provisions of this Agreement. The Contractor may provide certain services through key subcontracts with the prior review and approval of the FUND. Each subcontract entered into with a corporate entity separate from the Contractor for the purpose of delivering Program Services must be maintained throughout the term of the Agreement unless such change is approved in writing by the FUND. The FUND must be explicitly identified as the intended beneficiary of the key subcontract. The Contractor must maintain significant financial, legal, and audit oversight of any of its Key Subcontractors. The Contractor remains fully responsible for all services and actions performed under this Agreement. The Contractor shall submit all key subcontracts to the FUND for its approval. The Contractor shall submit all such key subcontracts with no redactions to the FUND before execution for its review and approval. **(Note: Costs/Fees for all services required under this Agreement shall be included in the Contractor's Claims Administrative Fee).**

6.2.0 Program Implementation

6.2.1 The Agreement includes an implementation period beginning on or around October 1, 2012, upon approval of the Agreement by OSC. During this time, the Contractor must undertake and complete all implementation activities, including but not limited to those specific

activities set forth in the Implementation and Start-up Guarantee Section 7.1.0 of the Agreement. Such implementation activities must be complete no later than December 31, 2013 so that the NYSIF Program is fully operational on January 1, 2014.

6.3.0 Account Team

6.3.1 The Contractor must maintain an organization of sufficient size with staff that possesses the necessary skills and experience to administer, manage, and oversee all aspects of the NYSIF Program during implementation and operation.

6.3.1a The account team must be comprised of qualified and experienced individuals who are acceptable to the FUND and who are responsible for ensuring that the operational, clinical and financial resources are in place to operate the NYSIF Program in an efficient manner;

6.3.1b The Contractor must ensure that there is a process in place for the account team to gain immediate access to appropriate corporate resources and senior management necessary to meet all NYSIF Program requirements and to address any issues that may arise during the performance of the Agreement.

6.3.2 The Contractor's dedicated account team must be experienced, accessible (preferably in the New York State Capital Region district) and sufficiently staffed to:

6.3.2a provide timely responses (1 to 2 Business Days) to administrative and clinical concerns and inquiries posed by the FUND for the duration of the Agreement to the satisfaction of the FUND;

6.3.2b immediately notify the FUND in writing of actual or anticipated events impacting NYSIF Program costs and/or delivery of services to Claimants (for example, drug recalls and withdrawals, class action settlements, and operational issues).

6.3.3 The Contractor's assigned account team must immediately notify the FUND in writing of actual or anticipated events impacting NYSIF Program costs and/or delivery of services to NYSIF Program Claimants.

6.3.4 The Contractor's dedicated account team must ensure that the NYSIF Program is in compliance with all legislative and statutory requirements. If the Contractor is unable to comply with any legislative or statutory requirements, the FUND must be notified in writing immediately.

6.4.0 **Customer Service:** The Contractor is responsible for all customer support and services including, but not limited to:

6.4.1 Maintaining a ~~Dedicated Call Center~~ call center(s) located in the United States staffed by fully trained customer service representatives and supervisors available 24 hours a day 365 Days a year. The Contractor must maintain a Dedicated Call Center for the Program between the hours of 7:00am and 7:00pm ET. During off hours, calls may be routed to a designated call center(s) located in the United States staffed by fully trained customer service representatives and supervisors. The ~~Dedicated Call Center~~ call center(s) must also provide immediate access to Pharmacist(s) 24 hours a day, 365 days a year. The ~~Dedicated Call Center~~ call center(s) must meet the Contractor's proposed customer service telephone guarantees set forth in Section 7.7.0 of this Agreement.

6.4.2 Customer service staff must use an integrated system to log and track all Claimant calls. The system must create a record of the Claimant contacting the call center, the call type, and all customer service actions and resolutions.

6.4.3 Customer service representatives must be trained and capable of responding to a wide range of questions, complaints and inquiries including but not limited to: NYSIF Program benefit levels, refills, order status, point of service issues, prior authorization, eligibility, Mail Service Pharmacy Process, Specialty Pharmacy Process services and Preferred Drug List alternatives.

6.4.4 Maintaining a backup customer service staff located in the United States with NYSIF Program-specific training to handle any overflow when the dedicated customer service center is unable to meet the Contractor's customer service performance guarantees as set forth in Section 7.7.0 of this Agreement. This back-up system would also be utilized in the event the primary customer service center(s) become unavailable; and

6.5.0 **Enrollee Communication Support**

6.5.1 All Claimant communications developed by the Contractor are subject to FUND review and prior written approval, including but not limited to any regular standardized direct communication with Claimants or their Physicians in connection with Claimant drug utilization or the processing of Claimant claims either through mail, e-mail, fax or telephone. The FUND in its sole discretion reserves the right to require any change it deems necessary.

6.5.2 The Contractor must work with the FUND to develop appropriate customized forms and letters for the NYSIF Program, including but not limited to mail order forms, prior authorization letters, Preferred Drug List, etc. All such communications must be approved by the FUND.

6.5.3 The Contractor must assist NYSIF is developing a customized Claimant information packet that will include information on available prescription drug services as well as a permanent ID card to be used when filling injury-related prescriptions.

6.6.0 **Enrollment Management:** The Contractor is responsible for the maintenance of accurate, complete, and up-to-date enrollment files, located in the United States, based on information provided by the FUND. These enrollment files shall be used by the Contractor to process retail, mail order and specialty pharmacy claims, provide customer service, and produce management reports and data files. The Contractor is required to provide enrollment management services including but not limited to:

6.6.1 Initial testing

6.6.1a Performing an initial enrollment load to commence upon receipt from the FUND during NYSIF Program implementation. The file may be an encrypted, fixed length ASCII text file that is transmitted using a secure transmission protocol or a custom file format. The determination will be made by the FUND;

6.6.1b Testing to determine if the enrollment file and enrollment transactions loaded correctly and that the enrollment system interfaces with the claims processing system to accurately adjudicate claims. The Contractor must submit enrollment test files to the FUND for auditing, provide the FUND with secure, online access

required to ensure accurate loading of NYSIF Program enrollment data, and promptly correct any identified issues to the satisfaction of the FUND;

6.6.2 Providing an enrollment system capable of receiving secure enrollment transactions every day, including weekends and holidays, and having all transactions fully loaded to the claims processing system within twelve (12) hours of release of a retrievable file by the NYSIF. The Contractor shall immediately notify the NYSIF of any delay in loading enrollment transactions. In the event the Contractor experiences a delay due to the quality of the data supplied by the NYSIF, the Contractor shall immediately load all records received (that meet the quality standards for loading) within twelve (12) hours of their release, as required. The NYSIF will release enrollment changes, including all additions, modifications and deletions since the previous transmission, to the Contractor in an electronic format daily (every day, including weekends and holidays). On occasion, the NYSIF will release more than one enrollment file within a 24-hour period. The Contractor must be capable of loading both files within the twelve (12) hour performance standard. The format of these transactions will be a fixed length ASCII text file. The ASCII text file is encrypted and transmitted each business day using a secure transmission protocol. Upon selection, the Contractor will be provided with the claim eligibility file specifications and the schedule for the transmission of the file.

6.6.3 Ensuring the security of all enrollment information as well as the security of a HIPAA compliant computer system in order to protect the confidentiality of Claimant data contained in the enrollment file. Any transfers of enrollment data within the Contractor's system or to external parties must be completed via a secured process;

6.6.4 Providing a back-up system or have a process in place where, if enrollment information is unavailable or not current at the point of service, Claimants can obtain Prescriptions without interruption, at the point of service. Short fill policies should be included in the Pharmacy Provider manual;

6.6.5 Cooperating fully with any FUND initiatives to use new technologies, processes, and methods to improve the efficiencies of maintaining enrollment data including any enrollment file conformance testing requested during the course of this Agreement;

6.6.6 Ability to manually load/correct an enrollment record and to contact the Pharmacy to allow the adjudication of a Prescription in an urgent or emergency situation. Occurrences of these situations are very rare; and

6.6.7 The Contractor must provide an instant enrollment or "short fill" service to injured workers of NYSIF policyholders. This service should allow immediate acceptance by any pharmacy in the Contractor's network in order to provide a limited number of cost-effective medication benefits to the Claimant.

6.7.0 **Reporting:** The Contractor is responsible for accurate reporting services including, but not limited to:

6.7.1 Generating and submitting monthly, quarterly, semi-annual and annual reports per NYSIF specification. Specifications will be provided upon vendor selection;

6.7.2 Capturing and providing the FUND with electronic file of eligibility and authorization on the GC3, or similar code level. The Contractor should have the capability to capture drug denials on the GCN and NDC code levels;

6.7.3 Supplying reports in paper format and/or in an electronic format (Microsoft Access, Excel, Word) as determined by the FUND. This includes, but is not limited to, reports and data files listed in Article XV of this Agreement;

6.7.4 Providing direct, secure access to the Contractor's claims system and any online and web-based reporting tools to the FUND's offices;

6.7.5 Providing Ad Hoc Reports and other data analysis at no additional cost. The exact format, frequency, and due dates for such reports shall be specified by the FUND. Information required in the Ad Hoc Reports may include but is not limited to providing:

6.7.5a Forecasting and trend analysis data;

6.7.5b Data necessary to track drug pricing;

6.7.5c Utilization data on the Mail Order Pharmacy and the Special Pharmacy Program;

6.7.5d Utilization review savings;

6.7.5e Benefit design modeling analysis;

6.7.5f Reports to meet clinical program review needs;

6.7.5g Reports segregating claims experience for specific populations; and

6.7.5h Reports to monitor Agreement compliance.

6.7.6 The Contractor must work with NYSIF to resolve reporting issues according to the timeframes described in Article XV.

6.8.0 **Consulting:** The Contractor is responsible for providing advice and recommendations regarding the Program. Such responsibility shall include, but not be limited to:

6.8.1 Informing the FUND in a timely manner concerning such matters as cost containment strategies, new drugs, conversion from Brand Drugs to Generic Drugs and how it will impact cost, Preferred Drug List configuration, technological improvements, e-prescribing, Pharmacy innovations, and State/Federal legislation (i.e., Prescription drug mandates, etc.) that may affect the Program. The Contractor must provide information and recommendations to the FUND on Preferred Drug List (PDL) placement of new generic and biological therapies prior to release into the marketplace to the extent such information is available in the public realm. The Contractor must also make available to the FUND one or more members of the clinical or account management team to discuss the implications of these new trends and developments. The FUND is not under any obligation to act on such advice or recommendation; and

6.8.2 Assisting the State with recommendations and evaluation of proposed benefit design changes and implementing any changes necessary to accommodate NYSIF Program modifications resulting from collective bargaining, legislation, or within the statutory discretion of the State. Recommendations must include a preliminary analysis of all associated costs, a clinical evaluation, and the anticipated impact of proposed NYSIF Program modifications and contemplated benefit design changes on Claimants.

In the event of a design change and the Contractor requests any change in compensation such change will be in accordance with Article VIII of this Agreement.

6.9.0 **Network Management**

6.9.1 **Retail Pharmacy Network**

6.9.1a The Contractor must maintain a credentialed and contracted Retail Pharmacy Network that meets or exceeds the NYSIF Program's minimum access standards throughout the term of the Agreement.

6.9.1b The NYSIF Program requires the Contractor have available to Claimants on January 1, 2014 the Retail Pharmacy Network it proposed in Exhibit C, Contractor's Proposal, of this Agreement, in accordance with the requirements set forth in Section 7.4.0 guaranteeing effective implementation of their Retail Pharmacy Network.

6.9.1c The Contractor is required to include Independent Pharmacies in its Retail Pharmacy Network. In developing its Retail Pharmacy Network, the Contractor is expected to use its best efforts to substantially maintain the composition of independent Network Pharmacies included in the NYSIF Program's current Retail Pharmacy Network provided such Pharmacies meet the requirements of Sections 6.9.2 and 6.9.3 of this Agreement, and are willing to accept the proposed aggressive reimbursement rates.

6.9.1d The Contractor shall include in its Retail Pharmacy Network any Pharmacy(ies) upon the FUND's request, where such inclusion is deemed necessary by the FUND to meet the needs of Claimants even if not otherwise necessary to meet the minimum access guarantees in Section 7.4.0 of this Agreement.

6.9.1e Any changes made by DCS to the scope of its agreement with the Contractor for Prescription Drug Program Services after execution of this Agreement, including but not limited to the request to include any individual independent Network Pharmacy(ies), shall have no impact on this Agreement or cost thereunder, unless the change is agreed to by NYSIF.

6.9.1f The Contractor must effectively communicate the content (including any subsequent changes) and requirements of the NYSIF Program's Preferred Drug List to their Retail Pharmacy Network.

6.9.1g Prior to January 1, 2014, the Contractor must ensure that their Network Pharmacies have the correct claim identification information (i.e. RX BIN #, RXPCN, RXGRP, effective date, phone number for questions, etc.) to facilitate accurate claims submission and uninterrupted access for NYSIF Program Claimants.

6.9.1h The Contractor must establish a process to provide Claimants with access to Limited Distribution Drugs through the Retail Pharmacy Network.

6.9.2 Pharmacy Credentialing

6.9.2a The Contractor must ensure its Retail Pharmacy Network is credentialed in accordance with all applicable federal and state laws, rules and regulations.

6.9.2b The Contractor must credential Pharmacies in a timely manner and shall have an effective process by which to confirm Network Pharmacies continuing compliance with credentialing standards.

6.9.2c The Contractor must maintain credentialing records and make them available for review by the FUND upon request.

6.9.3 Pharmacy Contracting: The Contractor is responsible for providing Pharmacy contracting services including, but not limited to:

6.9.3a Ensuring that all Network Pharmacies contractually agree to and comply with all of the NYSIF Program's requirements and benefit design specifications;

6.9.3b Ensuring that Network Pharmacies accept as payment-in-full, the Contractor's reimbursement for all claims processed based on the NYSIF Program's Lesser of Logic, as set forth in Section 11.6.0 of this Agreement;

6.9.3c Notifying the FUND in writing of any plan to renegotiate the financial terms of any Network Pharmacy contract utilized by the NYSIF Program for any Pharmacy that is located in the State of New York, or for any such Pharmacy located outside NYS that accounts for more than 0.25% of total NYSIF Program final paid claim Ingredient Costs;

6.9.3d Notifying the FUND in writing within 1 (one) Business day of any changes to contracts with Retail Pharmacy Network chain Pharmacies or independent Pharmacies negotiating collectively with the Contractor, including but not limited to, those identified as participating in the Contractor's network; and

6.9.3e Committing to administering Pharmacy contracts consistent with all representations made in the Contractor's cost proposal, including all representations regarding the administration of generic pricing and maintenance of the NYSIF Program's MAC list; and

6.9.3f Ensuring there are mechanisms in place to circumvent the referral of bills by participating pharmacies to third party billers for collection

6.9.4 **Pharmacy Audit:** The Contractor must have a staffed audit unit employing a comprehensive Pharmacy audit program that includes, but is not limited to:

6.9.4a Providing ample audit resources including access to the Contractor's on-line claims processing system to the FUND and the OSC at their respective offices through the date of the final financial settlement of the Agreement;

6.9.4b Providing FUND access and monthly updates to the Prescription Drug industry pricing source material (e.g. Red Book, Medispan, other) that the Contractor will be utilizing for the NYSIF Program for the purposes of conducting routine audits of claims data;

6.9.4c Conducting routine and targeted on-site audits of Network Pharmacies, the Mail Service Pharmacy and the Specialty Pharmacy(ies). Pharmacies that deviate significantly from patterns of dispensing in terms of cost, drug selection, overrides, Days supply or utilization are to be identified and targeted for on-site and desk audits in accordance with established selection and screening criteria. On-site audits must also be conducted upon request by the FUND, or when information is received by the Contractor that indicates a pattern of conduct by a Pharmacy that is not consistent with the NYSIF Program's design and objectives. Periodic, on-site audits must be conducted at least once during the course of the five (5) year resultant Agreement for Pharmacies that fall into the top fifty (50)

in terms of total dollar spend for the NYSIF Program. Any modifications to the proposed Pharmacy audit programs must receive prior approval by the FUND;

6.9.4d Providing reports to the FUND detailing audits planned, audits initiated, audits in progress, audits completed, audit findings, audit recoveries, and any other enforcement action by the Contractor. The Contractor must inform the FUND in writing of any allegation or other indication of potential fraud and abuse identified within seven (7) Business Days of such allegations or identification. The FUND must be fully informed of all fraud and abuse investigations impacting the NYSIF Program upon commencement regardless of whether the individual fraud and abuse investigation has a material financial impact to the State;

6.9.4e The Contractor must maintain the capability and contractual right to effectively audit the NYSIF Program's Retail Pharmacy Network, including the use of statistical sampling audit techniques and the extrapolation of errors;

6.9.4f Agreement to fully cooperate with all FUND and/or OSC audits consistent with the requirements of Appendices A and B as set forth in this Agreement, including provision of access to protected health information and all other confidential information when required for audit purposes as determined by the FUND and OSC as appropriate. The Contractor must respond to all State audit requests for information and/or clarification within fifteen (15) Business Days. The Contractor must perform timely reviews and respond in a time period specified by the FUND to preliminary findings submitted by the FUND and the Comptroller's audit unit in accordance with the requirements of Article XVII, "Audit Authority." Such audits may include, but are not limited to: mail order claims; Non-Network Pharmacy claims; and on-line Pharmacy claims. Use of statistical sampling of claims and extrapolation of findings resulting from such samples shall be acceptable techniques for identifying claims errors. The selected Contractor shall facilitate audits of network pharmacies as requested by the NYSIF and/or OSC;

6.9.4g Remitting 100% of pharmacy audit recoveries to the FUND within thirty (30) Days upon final audit determination consistent with the process specified in Article

XIV "Payments/(credits) to/from the Contractor" and Appendix B of this Agreement;

6.9.4h Utilizing the auditing tools and performance measures proposed by the Contractor to identify fraud and abuse by Network Pharmacies and/or Claimants; and

6.9.4i Permitting the FUND or a designated third party to audit pharmacy bills and drug company revenues.

6.10.0 **Mail Service Pharmacy Process:** The Contractor must provide all aspects of Mail Service Pharmacy Process. Such responsibility shall include, but not be limited to:

6.10.1 Having a fully staffed and fully operational Mail Service Pharmacy Process throughout the term of the resultant Agreement, utilizing one or more Mail Service Pharmacy Process Facilities meeting all New York State legal requirements. The Mail Service Pharmacy Process must be capable of dispensing all covered, FDA approved medications including any drug that could be classified as Specialty Drugs/Medications or requires special preparation or handling for up to a 90 day supply. Contractor must establish a process to provide Claimants with access to Limited Distribution Drugs placing no additional steps or burdens on the Claimant. Prescriptions are considered to be "submitted through the Mail Service Process" if they are submitted by phone, fax, internet, e-prescribing or mail to any Mail Service Pharmacy Process Facility, regardless of how the Prescription is filled. All covered Prescriptions, except for Limited Distribution Drugs, submitted through the Mail Service Pharmacy Process or through a Mail Service Pharmacy Process Facility shall be charged to the NYSIF Program based on the Contractor's mail service pricing terms and dispensing fees (if any) applicable to Brand name, Generic, and Compound Drug claims as set forth in Article XI, "NYSIF Program Claims Reimbursement" of this Agreement, including Specialty Drugs/Medications for certain enrollees. Limited Distribution Drugs submitted through the Mail Service Pharmacy Process shall be charged to the NYSIF Program based on the Contractor's Retail Network pricing terms and dispensing fees (if any) applicable to Brand Name, Generic and Compound Drug claims as set forth in Article XI, "NYSIF Program Claims Reimbursement" of this Agreement. The Mail Service Pharmacy Process shall apply the same Program benefit design features as the

Network Pharmacies, including but not limited to Mandatory Generic Substitution, DUR, Prior Authorization and Preferred Drug List;

6.10.2 Ensuring that all the FUND approved edits including, but not limited to, enforcing utilization edits (i.e. refill to soon, duplicate therapy, etc.) are built into the Prescription fulfillment system to protect a claimant's safety as well as to control NYSIF Program costs;

6.10.3 Ensuring that all Mail Service Pharmacy Process Facilities utilized in the Contractor's Mail Service Pharmacy Process meet all Prescription drug packaging regulatory requirements. Any facility located outside New York State that will provide service for the NYSIF Program must be registered with the NYS Department of Education and meet all requirements of Section 6808-b of NYS Education Law. The Mail Service Pharmacy Process must recognize the full prescribing authority of Medical Professionals granted by NYS where allowed by state law;

6.10.4 Providing a simple, user friendly method(s) of ordering, reordering, or transferring Prescriptions from retail to mail. Maintaining a Dedicated Call Center located in the United States employing a staff of Pharmacists, and a staff of fully trained customer service representatives, and supervisors available 24 hours a day 365 Days a year that must meet the Contractor's Mail Service Pharmacy Process guarantees set forth in Article VII, "Performance Guarantees" of this Agreement.

6.10.4a The Contractor must have an integrated system for customer service staff to utilize to respond to, log and track all Claimant inquiries. The system must create a record of the Claimant contacting the call center, the call type and all customer service actions and resolutions.

6.10.4b Customer service representatives must be trained and capable of responding to a wide range of questions, complaints and inquiries including but not limited to: NYSIF Program benefit levels, refills, order status, prices and billing, point of service issues, prior authorization and eligibility and, Mail Service Pharmacy Process, Specialty Pharmacy Process services and complaints, and Preferred

Drug List alternatives. Callers must be able to reorder and check order status through both the website and the telephone line;

6.10.5 Providing pre-addressed, postage-paid mail service envelopes to Claimants, and for inclusion in FUND publications, at the request of the FUND.

6.10.6 Having efficient procedures in place to handle routine Prescriptions, "urgent" Prescriptions, and Prescriptions that require "special" handling (i.e. temperature control, limited shelf life, high cost, etc.);

6.10.7 Providing standard mail service delivery using packaging that is appropriate for the drug dispensed and the address it is shipped to at no additional cost to the NYSIF Program or the Claimant. Easy open caps also must be provided to Claimants upon request at no additional cost;

6.10.8 Having a system in place to track all Prescriptions (both intervention and non-intervention) received for processing through the Mail Service Pharmacy Process from the date the Prescription is received to the date the mailing agent picks up the package. The Contractor must also be able to track fill accuracy rates;

6.10.9 Maintaining a process to collect information necessary to ensure claimant safety. The process should collect such information as drug allergies, chronic medical conditions, and other medications taken on a regular basis;

6.10.10 Maintaining a system that notifies Claimants about potential health and safety issues with their Prescriptions;

6.10.11 Maintaining efficient procedures regarding inventory management of the Mail Service Pharmacy Process Facility(ies) including, but not limited to, backorders, inventories of high demand drugs, supplies of difficult to obtain drugs, back-up supplier contracts, etc.;

6.10.12 Providing prompt notification to Claimants regarding out of stock items, partial fill orders, and changes to Prescriptions (e.g., approved or required dispensing of generics instead of Brand drugs). In out of stock situations, the Contractor must have a system in place to ensure that Prescriptions are filled in the most efficient manner whether it be

through an alternate facility(ies) or obtaining a re-stock from a supplier. If necessary, the Contractor shall call the Claimant first to obtain permission to contact their Physician to offer alternative medications, or to offer to return the prescription. If the Physician authorizes use of an alternative medication, a letter notifying the Claimant of the change must be sent to the Claimant before the medication is shipped or must accompany the Prescription;

6.10.13 Calling the prescribing Physician when a DAW-1 is indicated on the Prescription to confirm that the Physician understands the financial impact to the claimant and/or the FUND to determine if the Physician is willing to allow the generic version of the drug to be dispensed to the Claimant. If the Physician was previously contacted regarding the same Prescription for a particular Brand Drug for the same Claimant and required that the Brand Drug be dispensed, no call is required. If the Physician authorizes use of the generic version of the drug, a phone call shall be made to the Claimant of the approved change before the medication is shipped or the Contractor shall include a letter with the Prescription informing the Claimant of their physician's approval. If the Claimant has indicated on the mail service order form that they do not wish their Physician to be contacted for such determinations, no call shall be made;

6.10.14 Notifying the Claimant of nationwide out of stock issues, including information from the manufacturer or wholesaler regarding the anticipated date that the drug will resume shipment;

6.10.15 Utilizing best efforts to complete Physician clarification, verification, or other interventions within the five (5) Business Day service level standard. Should this require more than eight (8) Business Days, the Contractor shall call the Claimant and offer the Claimant the option of returning the prescription or continuing the intervention attempt;

6.10.16 Ensuring that the consent of the Claimant is obtained prior to calling the prescribing Physician with the exception of calls made for purposes of clarification, verification, settlement of other intervention claim issues or DAW-1 confirmations;

6.10.17 Providing all necessary clinical and educational support to NYSIF Program Claimants, and/or their family/caregiver utilizing the Mail Service Pharmacy Process, including

Claimants taking injectable, infusion or other drugs requiring special handling or special administration;

6.10.18 Having a back-up mail order facility(ies) to handle any overflow and/or situations where the primary mail order facility is unavailable;

6.10.19 Promoting the utilization of the Mail Service Pharmacy Process through targeted mailings, Physician communications, etc. if the FUND determines that such promotions are in the best financial interests of the FUND. All such activities, including mailings, are subject to change and require the prior written approval of the FUND. Any regular direct communication with Claimants or their Physicians in connection with Claimant drug utilization or the processing of Claimant claims, either through mail, e-mail, fax or telephone must be submitted for the FUND's approval. The cost of any approved promotion shall be borne by the Contractor, unless the FUND specifically requests a particular activity not required to be performed under the resultant Agreement. The FUND will not approve any mail order promotions that it determines will not result in a reduced net cost to the NYSIF Program;

6.10.20 The Contractor shall act in the best interests of the NYSIF Program when dispensing Generic Drugs through the Mail Service Pharmacy Process by avoiding the dispensing of NDC's with higher AWPs unless market conditions exist making dispensing the more cost effective NDC impractical or impossible;

6.11.0 Specialty Drugs/Medications (Amended April 4, 2012)

6.11.1 The Contractor must provide Claimants with access to all Medically Necessary Specialty Drugs/Medications covered by the Program through its Retail Pharmacy Network, Mail Service Pharmacy Process and Specialty Pharmacy. In the case of Limited Distribution Drugs, the Contractor shall provide Claimants with access in accordance with the following:

6.11.1a ***Retail Pharmacy Network Access***

The Contractor shall secure the participation of the authorized distributor in its Retail Pharmacy Network and bill the Program consistent with the Contractor's

contracted discount off of AWP for the Limited Distribution Drug, plus any dispensing fee. ~~If the Contractor is unable to secure the participation of the authorized distributor, the Contractor agrees to facilitate the Claimant's receipt of the drug and bill the NYSIF Program at the Minimum overall Guaranteed Discounts applicable to Brand Drugs for network pharmacies.~~

6.11.1b ***Mail Service Pharmacy Process Access***

~~For all Specialty Drugs including Limited Distribution Prescriptions submitted through the Mail Service Pharmacy Process, the~~ The Contractor must facilitate the Claimant's receipt of the Limited Distribution Drug. The Offeror shall secure the participation of the authorized distributor in its Retail Pharmacy Network and bill the Programs consistent with the Offeror's contracted discount off AWP for the Limited Distribution Drug, plus any dispensing fee. ~~by obtaining the drug from an authorized distributor and billing the NYSIF Program consistent with its Guaranteed Discounts applicable to Brand Drugs for the mail service pharmacy.~~

6.11.2 Specialty Pharmacy Program (Amended April 4, 2012)

6.11.2a The Contractor must provide Claimants with access to all Medically Necessary Specialty Drugs/Medications covered by the NYSIF Program through its proposed Specialty Pharmacy Program. Such responsibility must include, but not be limited to:

6.11.2a(1) Developing a listing of the Specialty Drugs/Medications proposed for inclusion in the Specialty Pharmacy Program;

6.11.2a(2) Having a fully staffed and fully operational Specialty Pharmacy Program in which Specialty Drugs/Medications are provided by one or more Designated Specialty Pharmacies. All Designated Specialty Pharmacies must meet all New York State legal requirements. Any facility located outside New York State that will provide service for the NYSIF Program must be registered with the NYS Department of Education and meet all requirements of Section 6808-b of NYS Education Law. The Specialty Pharmacy Process must recognize the

full prescribing authority of Medical Professionals granted by NYS where allowed by state law.

6.11.2a(3) The Contractor must establish a process to provide Claimants with access to Limited Distribution Drugs not available through the Designated Specialty Pharmacy(ies), which places no additional steps or burdens on the Claimant. The Offeror shall secure the participation of the authorized distributor in its Retail Pharmacy Network and bill the Programs consistent with the Offeror's contracted discount off AWP for the Limited Distribution Drug, plus any dispensing fee. ~~The Contractor must bill the NYSIF Program for these Prescriptions consistent with the Contractor's Minimum Guaranteed Discount applicable to Prescriptions dispensed at Network Pharmacies.~~

6.11.2a(4) Providing a fully staffed and fully operational customer support call center available to Claimants 24 hours a day, 365 Days a year including Pharmacists, clinicians, and registered nurses trained in a Claimant's specific Specialty Drug/Medication therapies. The Contractor must provide callers with access to customer service staff and Pharmacists through the NYSIF Program's toll-free telephone line who are able to respond timely to questions, complaints and inquiries including but not limited to: Program benefit inquiries, refills, order status, point of service issues, Specialty Pharmacy Process complaints, preferred drug status, and claim status. Callers must be able to reorder and check order status through the too-free telephone line.

6.11.2a(5) Administering a safety monitoring system that complies with the Food and Drug Administration (FDA) Amendments Act of 2007 which requires a Risk Evaluation and Mitigation Strategy (REMS) from the Specialty Drugs/Medications manufacturers to ensure the benefits of a drug outweigh its risks.

6.11.2a(6) Completing Physician consultation, coordination of care, patient care management and other interventions on a clinically appropriate and timely basis.

6.11.2a(7) Providing all necessary clinical and educational support to Claimants, and/or their family/caregiver utilizing the Specialty Pharmacy Process, including but not limited to explaining the treatment plan and ancillary supplies, disease/drug education, side-effect management, compliance management and administration training.

6.11.2a(8) Applying the same NYSIF Program benefit design features as the Mail Service Pharmacy Process, including but not limited to Mandatory Generic Substitution, DUR, Prior Authorization, and Preferred Drug List.

6.11.2a(9) Ensuring that all the FUND's approved edits including, but not limited to, enforcing utilization edits (e.g. refill to soon, duplicate therapy, etc.) are built into the Prescription fulfillment process system to protect a claimants safety as well as to control NYSIF Program costs.

6.11.2a(10) Ensuring that all Designated Specialty Pharmacies utilized in the Contractor's Specialty Pharmacy Program meet all Prescription drug packaging regulatory requirements. The Contractor must ensure that Specialty Drugs/Medications are shipped to Claimants in appropriate packing materials so that Specialty Drugs/Medications are safe and effective and delivered on time.

6.11.2a(11) Providing a simple, user friendly method(s) of ordering, reordering, and transferring Prescriptions from retail and mail to the Designated Specialty Pharmacy(ies) including pre-addressed postage paid Specialty Pharmacy Program envelopes. The Contractor must send a Specialty Pharmacy Program letter to Claimants who have received a First Fill of a Specialty

Drug/Medication through a Network Pharmacy. The letters must be sent within thirty (30) Days of the Prescription being filled to Enrollees who have received a Specialty Drug/Medication.

6.11.2a(12) Maintaining a comprehensive system for the Contractor's staff to utilize to track all Claimant inquiries including, but not limited to; Program benefits, refills, order and claim status, Preferred Drug List inquiries and Specialty Pharmacy Process complaints. The system shall include call type, customer service actions and resolutions.

6.11.2a(13) Having a system in place to track all Prescriptions received for processing through the Specialty Pharmacy Process from the date the Prescription is received to the date the Prescription is shipped. The Contractor must also be able to track fill accuracy rates.

6.11.2a(14) Maintaining a process to collect information from individuals necessary to ensure claimant safety. The process should collect such information as drug allergies, chronic medical conditions, and other medications taken on a regular basis.

6.11.2a(15) Ensuring that the Designated Specialty Pharmacy(ies) have efficient procedures regarding inventory management including, but not limited to, backorders, inventories of high demand drugs, supplies of difficult to obtain drugs, back-up supplier contracts, etc.

6.11.2a(16) Providing notification to Claimants as soon as possible for out of stock items, partial fill orders, and changes to Prescriptions (e.g., dosing or method of administration). In out of stock situations, the Contractor must have a system in place to ensure that Prescriptions are filled in the most efficient manner whether it be through an alternate facility(ies) or obtaining a re-stock from a supplier. The Contractor must contact the Claimant's Physician, if necessary, to offer alternative medications or offer to return the Prescription. If the Physician authorizes use of an alternative medication, a letter

notifying the Claimant of the change must be sent to the Claimant before the medication is shipped or must accompany the Prescription.

6.11.2a(17) Promptly notifying the FUND of nationwide out of stock issues, including information from the manufacturer or wholesaler regarding the anticipated date that the drug will resume shipment.

6.11.2a(18) Having back-up Designated Specialty Pharmacies to handle any overflow and/or situations where the primary Specialty Program facility is unavailable.

6.11.2a(19) Recommending newly launched Specialty Drugs/Medications for inclusion in the Specialty Pharmacy Program based on the established criteria/definition of Specialty Drug/Medications, in a format to be approved by the FUND. Prior to inclusion in the NYSIF Program, or if not accepted by the FUND to be included in the NYSIF Program, the Contractor must bill the NYSIF Program for these Prescriptions consistent with the Contractor's contracted discount off of AWP at the dispensing Network Pharmacies or the Guaranteed Discount at the Mail Service Pharmacy Process, based on where each Prescription was actually dispensed. Inclusion of new Specialty Drugs/Medications shall have a cost-neutral or positive financial impact on the NYSIF Program, and in no case shall the Ingredient Cost of a newly added Specialty Drug/Medication charged to the Program exceed the Guaranteed Discount on Specialty Pharmacy Drugs.

6.12.0 Claims Processing

6.12.1 The Contractor must provide all aspects of claims processing. Such responsibility shall include but not be limited to:

6.12.1a Verifying that the NYSIF Program's benefit design has been loaded into the system appropriately to adjudicate and calculate cost sharing and other edits correctly;

6.12.1b Accurate and timely processing of all claims submitted under the NYSIF Program in accordance with the FUND requirements at the time the claim was incurred as specified to the Contractor by the FUND;

6.12.1c Charging the NYSIF Program consistent with the Contractor's proposed pricing quotes;

6.12.1d Developing and maintaining claim payment procedures, guidelines, and system edits that guarantee accuracy of claim payments for covered expenses only, utilizing all edits as proposed and approved by the FUND. The Contractor shall utilize refill too soon edits and duplication of therapy edits for all claims unless exceptions are specifically approved in advance by the FUND. The Contractor's system must ensure that refilling Prescriptions prior to use of the minimum prescribed Days supply does not result in over dispensing;

6.12.1e Managing Preferred Drug List placement of drugs consistent with the NYSIF Program design;

6.12.1f Maintaining claims histories for 24 months online and archiving older claim histories for up to 6 years with procedures to easily retrieve and load claim records;

6.12.1g Maintaining the security of the claim files and ensuring HIPAA compliance;

6.12.1h Reversing all attributes of claim records, e.g. AWP, quantity, Days supply, etc., processed in error ~~or due to fraud~~ including the reversal of any Claim Administration Fee associated with the original claim and crediting the NYSIF Program for all costs associated with the claim processed in error ~~or due to fraud~~ including but not limited to the Claim Administration Fee; and

6.12.1i Agreeing that all claims data is the property of the State. The Contractor cannot share, sell, release, or make the data available to third parties in any manner without the prior consent of the FUND. The FUND understands that the selected Contractor will be required to share certain claims data with pharmaceutical manufacturers for purposes of obtaining for the NYSIF

Program all Pharma Revenue due it under the Agreement. The Contractor shall inform the FUND of the types of data being shared for these specific authorized purposes.

6.12.2 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;

6.12.3 Maintaining a claims processing system capable of integrating and enforcing the various utilization review components of the NYSIF Program, including, but not limited to: Mandatory Generic Substitution, Prior Authorization, messaging capability in the current NCPDP format and a concurrent DUR program to aid the Pharmacist at the point of sale;

6.12.4 Maintaining an electronic claims processing system capable of obtaining information from Network Pharmacies to ensure consistent enforcement of the NYSIF Program's mandatory generic substitution provisions. In particular, the claims processing system must be capable of capturing information concerning the availability of the generic at the Pharmacy submitting the electronic claim. If a Generic Drug is available to be dispensed by the Retail Pharmacy Network, the NYSIF Program's mandatory generic substitution rules shall be applied. If the Network Pharmacy does not have the A-rated or authorized generic in stock, mandatory generic substitution provisions will not apply and the Claimant shall receive the Brand Drug and the Program charged based on generic pricing. The NYSIF Program shall reject claims for Brand Drugs subject to mandatory generic substitution that are submitted with a DAW-0 code with appropriate messaging and requires resubmission of the claim since a DAW-0 code provides no indication of Generic Drug availability in the Pharmacy. The NYSIF Program logic for the Pharmacy Submitted DAW codes is listed below:

Pharmacy Submitted DAW	**Pricing**
0	Brand
1	Generic
2	Generic
3	Generic
4	Generic

5	Generic
6	Generic
7	Brand
8	Generic
9	Generic

6.12.5 Maintaining a claims processing system capable of ensuring that claims are consistently processed with the appropriate brand name/generic/compound classification in accordance with the requirements set forth in Article XI: "NYSIF Program Claims Reimbursement" of this Agreement.

6.12.6 Maintaining a Program specific MAC List for Pharmacies;

6.12.7 Processing Non-Network Pharmacy claims submitted to the Contractor in accordance with Chapter V of title 12 NYCRR, as follows:

6.12.7a Brand Drugs, including Specialty Drugs/Medications, must be charged to the NYSIF Program at the New York State Workers' Compensation Board rates, currently a 12% discount off of AWP, plus a $4 Dispensing Fee.;

6.12.7b Generic Drugs, including Specialty Drugs/Medications, must be charged to the NYSIF Program at the New York State Workers' Compensation Board rates, currently a 20% discount off of AWP, plus a $5 Dispensing Fee;

6.12.8 Processing all manually submitted claims including but not limited to, out of network claims, and in-network manual claims, in accordance to the Contractor's proposed Claims Adjudication Guarantee;

6.12.9 Analyzing and monitoring claim submissions to promptly identify errors, fraud and abuse and reporting to the FUND such information in a timely fashion in accordance with a FUND approved process The NYSIF Program shall be charged only for accurate (i.e., the correct dollar amount) claims payments of covered expenses. The NYSIF Program will be charged a Claims Administration Fee only for Final Paid Claims. The Contractor will credit the NYSIF Program the amount of any overpayment regardless of whether any overpayments are recovered from the Pharmacy and/or

Claimant in instances where a claim is paid in error due to Contractor error, or due to fraud or abuse. The Contractor shall report fraud and abuse to the appropriate authorities. In cases of overpayments resulting from errors only found to be the responsibility of the FUND, the Contractor shall use reasonable efforts to recover any overpayments and credit 100% of any recoveries to the NYSIF Program upon receipt; however the Contractor, is not responsible to credit amounts that are not recovered;

6.12.10 Establishing a process where Pharmacies can verify eligibility of Claimants during Call Center Hours;

6.12.11 Requiring network pharmacies to submit to the Contractor for each drug dispensed the Pharmacy's Submitted Cost to ensure that the NYSIF Program is charged according to the NYSIF Program's Lesser of Logic; and,

6.12.12 Having a process in place (fully staffed with ample telephone trunks) available 24 hours a Day, seven Days a week where a Pharmacist can call to quickly resolve point of service issues.

6.13.0 Utilization Management

6.13.1 Mandatory Generic Substitution at Retail and Mail

To ensure strict adherence to the NYSIF Program's Mandatory Generic Substitution Requirement and protect the financial interests of the NYSIF Program, the Contractor is required to:

6.13.1a Unless otherwise directed by the FUND, apply mandatory generic substitution to all specific NDC's of Brand Drugs for which there is an FDA approved A-rated Generic Drug (including but not limited to, Generic Drugs rated AA, AB, AN, AO, AT, etc) or an authorized Generic Drug as permissible by NYS law. Network Pharmacies shall comply with all state laws related to mandatory generic substitution. The NYSIF Program's mandatory generic substitution provisions shall apply to any claim where the A-rated or authorized Generic Drug is required or permitted to be substituted under state law. Mandatory generic substitution provisions will not apply to B-rated or unrated Generic

Drugs or in the unlikely event that state law prohibits dispensing of the A-rated or authorized Generic Drug.

6.13.1b Monitor the pharmaceutical industry on behalf of the FUND to identify Generic Drugs expected to enter the market. Prior to the actual introduction of the Generic Drug to market, the Contractor shall inform the FUND of anticipated shipping dates of the first Generic Drug introduced into the market for one or more strengths of a particular Brand Drug.

6.13.1c Charge the NYSIF Program based on the NYSIF Program MAC List price assigned to the GCN of the dispensed Brand Drug subject to the NYSIF Program's Lesser of Logic plus the applicable dispensing fee as set forth within Article XI, "NYSIF Program Claims Reimbursement," of this Agreement.

6.13.1d Promptly notify and receive FUND prior written approval for any and all exceptions to the NYSIF Program's mandatory substitution provisions. Following commencement of mandatory generic substitution, the Contractor must receive FUND written approval prior to suspending enforcement of the NYSIF Program's mandatory generic substitution provisions.

6.13.1e Maintain an electronic claims processing system capable of obtaining information from Network Pharmacies to ensure consistent enforcement of the NYSIF Program's mandatory generic substitution provisions. In particular, the claims processing system must be capable of capturing information concerning the availability of the Generic Drug at the Network Pharmacy submitting the electronic claim. If a Generic Drug is available to be dispensed by the Network Pharmacy, the NYSIF Program's mandatory generic substitution rules shall be applied. If the Network Pharmacy does not have the A-rated or authorized Generic Drug in stock, mandatory generic substitution provisions will not apply and the Claimant shall receive the Brand Drug and the NYSIF Program charged based on Generic Drug pricing. The Contractor's claims processing system must reject, with appropriate messaging, claims for Brand Drugs subject to mandatory generic substitution that are submitted with a DAW-0 code requiring resubmission of the claim (since a DAW-0 code provides no indication of

Generic Drug availability in the Pharmacy). Similar rules can be applied to other DAW submission codes as necessary to ensure consistent, accurate application of the NYSIF Program's mandatory generic substitution requirements.

6.13.1f Immediately notify the FUND of changes (from brand to generic or generic to brand) in the NDC classification submitted by the Contractor, subject to the NYSIF Program's definitions of Brand and Generic Drugs contained in Article I of the Agreement.

6.14.0 Clinical Management/Drug Utilization Review (DUR)

6.14.1 To ensure that the resources available to the NYSIF Program are utilized for appropriate, Medically Necessary Drug therapy, the Contractor is required to administer a prior authorization program which includes, at a minimum:

6.14.1a A Prior Authorization Program for high cost Prescription drugs that are prescribed for very specific medical indications. Only medications that have been identified by the Contractor as appropriate for Prior Authorization and reviewed by the FUND shall be included in the Prior Authorization Program. The Prior Authorization Program also subjects specific drugs in certain categories to clinical criteria before benefits are authorized for payment including but not limited to: anti-obesity agents; topical tretinoin; antifungal agents; Hepatitis C agents; Hepatitis B agents for interferon use; select Osteoporosis agents; Respiratory Syncytial Virus (RSV) Therapy agents, select stimulant agent; Multiple Sclerosis agents; Low Molecular Weight Heparin agents; Growth Hormones; Cancer; Pain/Arthritis; Phychosis agents and, Pulmonary Arterial Hypertension agents. Only medications that have been identified as appropriate for the Prior Authorization Program by the Contractor and reviewed by the FUND shall be included in the Prior Authorization Program;

6.14.1b Monitoring market changes and recommending deletions or additions to the list of drugs requiring Prior Authorization on an ongoing basis which must be reviewed by the FUND prior to implementation of any changes to the list of medications;

6.14.1c Promptly loading approved prior authorization received by the NSIF Program into the claims processing system.

6.14.1d Loading one or more files of Prior Authorization approved-through dates from the incumbent contractor, prior to the January 1, 2014 implementation date, once an acceptable file is received.

6.14.2 Concurrent Drug Utilization Review (DUR)

To safeguard claimant health and ensure adherance with the NYSIF Program's benefit design, the Contractor must administer a concurrent DUR program which includes at a minimum:

6.14.2a A point of service system at all Retail Pharmacy Network locations, Mail Service Pharmacy Process Facilities and Specialty Pharmacies which is continually updated with the latest patient safety edits with the capacity to "message" Pharmacists related to safety issues prior to the dispensing of the Prescription drug; and

6.14.2b A fully integrated point of service system capable of enforcing the NYSIF Program's benefit design features.

6.14.3 Physician Education

6.14.3a Subject to FUND review and approval, the Contractor must undertake a Physician education program involving communications with prescribing Physicians which includes at a minimum:

6.14.3a(1) Analysis of Physician's drug or condition specific prescribing patterns;

6.14.3a(2) Educating Physicians about the clinical and economic aspects of their prescribing decisions. Any communication with Physicians prescribing medications for Claimants shall make the Physician aware of the distribution channel most cost effective to the NYSIF Program;

6.14.3a(3) Reporting the results of its Physician Education initiatives to the FUND on a quarterly basis in a mutually agreed upon format; and

6.14.3a(4) The Physician Education Program may not be funded by pharmaceutical manufacturers.

6.14.4 Patient Education

6.14.4a Subject to FUND review and approval, the Contractor must develop and implement a Patient Education program consisting of communications to patients which:

6.14.4a(1) Analyzes drug utilization from a clinical standpoint to identify and facilitate communication with Claimants that have chronic diseases to maximize health benefits of drug treatment;

6.14.4a(2) Analyzes drug utilization to identify and facilitate communication with Claimants not managing their drug utilization in the most cost effective manner for the Claimant; and

6.14.4a(3) Reports the results of its patient education initiatives to the FUND on a quarterly basis in a mutually agreed upon format.

6.14.4b The Patient Education Program may not be funded by pharmaceutical manufacturers.

6.15.0 Preferred Drug List Development and Management

The Contractor must provide PDL development and management services for the NYSIF Program. Such responsibility shall include but not be limited to:

6.15.1 Creating and maintaining a formulary that is tailored to NYSIF specifications, including the categorization of drugs, e.g. drugs requiring prior authorization, covered drugs dispensed not requiring prior authorization;

6.15.2 Providing NYSIF with a list of therapeutic categories routinely excluded from coverage;

6.15.3 Agreeing that the Contractor does not and will not accept payments from drug companies to promote specific products;

6.15.4 Notifying NYSIF a minimum of three weeks prior to any additions, deletions and modifications to the existing formulary and whether or not the affected drugs are covered or require prior authorization;

6.15.5 Notifying NYSIF a minimum of three weeks prior to the inclusion of new drugs in the formulary and specify whether or not the drugs are covered or require prior authorization; and

6.15.6 Providing NYSIF with an electronic file of all formulary drugs including dosages, NDC numbers, GCN and GC3 codes. The frequency of this file submission will be determined by NYSIF and will be provided upon vendor selection.

ARTICLE VII: PERFORMANCE GUARANTEES

The Parties agree that the following guarantees and the corresponding credit amounts for failure to meet the Contractor Performance Guarantees shall be implemented effective January 1, 2014. The Contractor acknowledges and agrees that failure to perform the Program Services features in such a manner which either meets or exceeds any, and/or all of the Contractor Performance Guarantee(s) as set forth in this Article, and/or fails to make any payment(s) of any such credit amounts 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. Credit amounts are cumulative. Amounts due from the Contractor to the FUND for failure to perform and audit credit amounts, as determined pursuant to Article XIV of this Agreement, shall be made in such amounts as determined by the FUND to be final. Upon such determination, the FUND shall notify the Contractor, in writing, and the Contractor shall apply such amounts as a credit against the monthly Claims Administration Fee in accordance with Article XIV of this Agreement within thirty (30) Days of receiving such notification by the FUND. These amounts must also be applied as a credit against the Claim Administration Fee reported in the Annual Financial Report.

7.1.0 Implementation and Start-up Guarantees and Credit Amount

7.1.1 ***Guarantee:*** The Contractor guarantees that all Implementation and Start-up activities will be completed no later than December 31, 2013 so that, effective January 1, 2014, the Contractor can assume full operational responsibility for the NYSIF Program. For the purpose of this guarantee, the Contractor must, on January 1, 2014, have in place and operational:

7.1.1a a contracted Retail Pharmacy Network that meets the access standards set forth in Section 7.4.0 of this Agreement. Additionally, in order to meet the Contractor's implementation guarantee, the network implemented on January 1, 2014 must include all chain pharmacies with more than 20 locations and all groups of 20 or more independent pharmacies utilizing the same third party organization to collectively negotiate network participation agreements, as identified in the Contractor's Proposed Retail Pharmacy Network File, to the extent the subject chains and/or independent Pharmacy groups continue in operation on and after January 1, 2014.

The NYSIF Program requires that all chain pharmacies with less than 20 locations, groups of less than 20 independent pharmacies utilizing the same third party organization to collectively negotiate network participation agreements, and all independent pharmacies, as identified in the Contractor's Proposed Retail Pharmacy Network File, included in the Contractor's Retail Pharmacy Network implemented on January 1, 2014. Acceptable reasons for non-participation of independents, smaller chains or groups of individual pharmacies contracting collectively on January 1, 2014 include, and are limited to: a Pharmacy's violation of state and/or federal laws; a Pharmacy's failure to meet the Contractor's credentialing criteria; or a Pharmacy's failure to fulfill its contractual obligations and no remedy can be achieved. On January 1, 2014, the Retail Pharmacy Network must meet all requirements set forth in Section 6.9.0 of this Agreement and be available to fill Enrollee Prescriptions for all Covered Drugs including Specialty Drugs/Medications(for those claimants that don't participate in the Specialty Pharmacy Program);

7.1.1b A fully operational Mail Service Pharmacy Process utilizing facilities as necessary to ensure that Claimants have access to all Covered Drugs, including

Specialty Drugs/ Medications (for those groups that don't participate in the Specialty Pharmacy Program) as set forth in Section 6.10.0 of this Agreement. The Contractor must have a plan in place to facilitate the transfer of Prescription information, including open refills and prior authorizations from the previous program administrator and outline the procedures they will utilize to assure a smooth mail service transition for claimants;

7.1.1c A fully operational Specialty Pharmacy Program utilizing facilities as necessary to ensure that Claimants have access to all covered Specialty Drugs/Medications as set forth in Section 6.11.2 of this Agreement. The Contractor must have a plan in place to facilitate the transfer of specialty Prescription information, including open refills and prior authorizations, from the previous provider of service and outline the procedures that will be utilized to assure a smooth Specialty Pharmacy Program transition for affected claimants;

7.1.1d A fully operational call center providing all aspects of customer support and services as set forth in Section 6.4.0 of this Agreement;

7.1.1e An on-line claims processing system that applies FUND approved edits and point of service edits, including drug utilization review edits, as set forth in Section 6.12.0 of this Agreement;

7.1.1f An on-line claims processing system with real time access to the most updated, accurate enrollment and eligibility data provided by the FUND to correctly pay claims for eligible Claimants consistent with NYSFI Program benefit design and contractual obligations; and

7.1.2 ***Credit Amount:*** The Contractor's quoted percent to be credited for each day that all Implementation and Start-Up requirements are not met is (TBD percent (TBD%) of the 2014 Claims Administration Fee (prorated on a daily basis).

7.2.0 <u>Enrollment Management Guarantee and Credit Amount</u>

7.2.1 ***Guarantee:*** The Contractor guarantees that one hundred percent (100%) of all NYSIF Program enrollment records that meet the quality standards for loading will be loaded

into the Contractor's enrollment system within twelve (12) hours of release by the FUND.

7.2.2 ***Credit Amount*:** For each 24 hour period beyond twelve (12) hours from the release by the FUND that one hundred percent (100%) of the NYSIF Program enrollment records that meet the quality standards for loading is not loaded into the Contractor's enrollment system, the Contractor shall credit against the NYSIF Program's Claims Administration Fee the amount of $(TBD).

7.3.0 Management Reports and Claim Files Guarantee and Credit Amount

7.3.1 ***Guarantee:*** For each management report or claim file listed in Article XV of this Agreement, the Contractor guarantees that accurate management reports and claims files shall be delivered to the FUND no later than their respective due dates inclusive of the date of receipt.

7.3.2 ***Credit Amount*:** For each management report or claim file listed in Article XV of this Agreement that is not received by its respective due date, the Contractor shall credit against the NYSIF Program's Claims Administration Fee the amount of $(TBD) per report per each Business Day between the due date and the date the management report or claims file is received by the FUND inclusive of the date of receipt.

7.4.0 Retail Pharmacy Network Access Guarantee and Credit Amount

7.4.1 ***Guarantee:*** The Contractor guarantees that effective January 1, 2014 and throughout the term of the Agreement:

7.4.1a At least ninety percent (90%) of Claimants in urban areas will have access to a Network Pharmacy. The minimum access guarantee for Claimants in urban areas is at least one (1) Network Pharmacy within two (2) miles of an Claimant's home;

7.4.1b At least ninety percent (90%) of Claimants in suburban areas will have access to a Network Pharmacy. The minimum access guarantee for Claimants in suburban areas is at least one (1) Network Pharmacy within five (5) miles of an Claimant's home; and

7.4.1c At least seventy percent (70%) of Claimants in rural areas will have access to a Network Pharmacy. The minimum access guarantee for Claimants in rural areas is at least one (1) Network Pharmacy within fifteen (15) miles of a Claimant's home.

7.4.2 ***Credit Amount:***

7.4.2a The Contractor shall credit against the NYSIF Program's Claims Administration Fee the amount of $(TBD) for each .01 to 1.0% below the ninety percent (90%) minimum access guarantee for any quarter in which the Network Pharmacy Access for Urban Areas Guarantee is not met by the Contractor.

7.4.2b The Contractor shall credit against the NYSIF Program's Claims Administration Fee the amount of $(TBD) for each .01 to 1.0% below the ninety percent (90%) minimum access guarantee for any quarter in which the Network Pharmacy Access for Suburban Areas Guarantee is not met by the Contractor.

7.4.2c The Contractor shall credit against the NYSIF Program's Claims Administration Fee the amount of $(TBD) for each .01 to 1.0% below the seventy percent (70%) access guarantee for any quarter in which the Network Pharmacy Access for Rural Areas Guarantee is not met by the Contractor.

7.4.3 Measurement of compliance with each access guarantee in Section 7.4 of this Agreement will be based on a "snapshot" of the Retail Pharmacy Network taken on the last Day of each quarter within the current Plan Year. The results must be provided in the format contained in Exhibit I.Y4 of the RFP. The report is due thirty (30) Days after the end of the quarter.

7.5.0 **Turnaround Time for Claims Adjudication Guarantee and Credit Amount**

7.5.1 ***Guarantee:*** The Contractor guarantees that at least ninety-nine and five-tenths percent (99.5%) of submitted claims that require no additional information in order to be properly adjudicated that are received by the Contractor shall be turned around within ten (10) Business Days from the date the claim is received in the FUND's designated post office box to the date the Explanation of Benefits is received by the mailing agent.

7.5.2 ***Credit Amount:*** For each .01 to .25% of Enrollee-submitted claims that require no additional information in order to be properly adjudicated that are received by the Contractor and not turned around within ten (10) Business Days from the date the claim is received in the Contractor's NYSIF designated post office box to the date the Explanation of Benefits is received by the mailing agent, below the standard of ninety-nine and five-tenths percent (99.5%), as calculated on a quarterly basis, the Contractor shall credit against the NYSIF Program's Claims Administration Fee the amount of $(TBD).

7.6.0 **Turnaround Time for Mail Service Prescriptions Guarantee and Credit Amount**

7.6.1 ***Guarantee:*** The Contractor guarantees that at least ninety-five percent (95%) of all non-intervention mail service Prescriptions will be turned around in two (2) Business Days (not including the date of Prescription receipt). Turnaround time is measured from the day after the Prescription is received by the Mail Service Pharmacy to the date the Prescription is received by the mailing agent. For example, a Prescription order received on Monday, January 6, 2014, by the mail service Pharmacy, must be received by the mailing agent no later than Thursday, January 9, 2014s;

7.6.2 ***Credit Amount:*** For each .01 to 1.0% below ninety-five percent (95%) percent of all non-intervention mail service Prescriptions not turned around within two (2) Business Days, calculated on a quarterly basis, the Contractor shall credit against the NYSIF Program's Claims Administration Fee the amount of $(TBD).

7.6.3 ***Guarantee*****:** The Contractor guarantees that at least ninety-five percent (95%) of all intervention mail service Prescriptions shall be turned around in five (5) Business Days (not including the date of Prescription receipt). Turnaround time is measured from the date the Prescription is received by the mail service Pharmacy to the date the Prescription is received by the mailing agent. For example, a Prescription order received on Monday, January 6, 2014 by the Mail Service Pharmacy must be received by the mailing agent no later than Tuesday, January 14, 2014.

7.6.4 ***Credit Amount:*** For each .01 to 1.0% below ninety-five percent (95%) of all intervention mail service Prescription not turned around within five (5) Business Days, calculated on a

quarterly basis, the Contractor shall credit against the NYSIF Program's Claims Administration Fee the amount of $(TBD).

7.7.0 Program Call Center Telephone Guarantees and Credit Amounts

7.7.1 *Guarantees:*

7.7.1a *Call Center Availability*: The NYSIF Program's service level standard requires that the Contractor's telephone line will be operational and available to Claimants and pharmacies at least ninety-nine and five-tenths percent *(*99.5%) of the Contractor's Call Center Hours. The Call Center availability shall be reported monthly and calculated quarterly;

7.7.1b *Call Center Telephone Response Time:* The NYSIF Program's service level standard requires that at least ninety percent (90%) of the incoming calls to the Contractor's telephone line will be answered by a customer service representative within sixty (60) seconds. Response time is defined as the time it takes incoming calls to the Contractor's telephone line to be answered by a customer service representative. The telephone Call Center response time shall be reported monthly and calculated quarterly;

7.7.1c *Telephone Abandonment Rate*: The NYSIF Program's service level standard requires that the percentage of incoming calls to the Contractor's telephone line in which the caller disconnects prior to the call being answered by a customer service representative will not exceed three percent (3%). The telephone abandonment rate shall be reported monthly and calculated quarterly; and

7.7.1d *Telephone Blockage Rate*: The NYSIF Program's service level standard requires that not more than three percent (3%) of incoming calls to the customer service telephone line will be blocked by a busy signal. The telephone blockage rate shall be reported monthly and calculated quarterly.

7.7.2 *Credit Amounts:*

7.7.2a *Call Center Availability*: For each .01 to .25% below the standard of ninety-nine and five-tenths percent (99.5%) that the Contractor's telephone line is not

operational and available to Claimants and Pharmacies during the Contractor's Call Center Hours calculated on a quarterly basis, the Contractor shall credit against the NYSIF Program's Claims Administration Fee the amount of $(TBD) per quarter;

7.7.2b ***Call Center Telephone Response Time*:** For each .01 to 1.0% of incoming calls to the Contractor's telephone line below the standard of ninety percent (90%) that is not answered by a customer service representative within sixty (60) seconds, calculated on a quarterly basis, the Contractor shall credit against the NYSIF's Program's Claims Administration Fee the amount of $(TBD) per quarter;

7.7.2c ***Telephone Abandonment Rate*:** For each .01 to 1.0% of incoming calls to the Contractor's telephone line in which the caller disconnects prior to the call being answered by a customer service representative in excess of three percent (3%) calculated on a quarterly basis, the Contractor shall credit against the NYSIF Program's Claims Administration Fee the amount of $(TBD) per quarter; and

7.7.2d ***Telephone Blockage Rate*:** For each .01 to 1.0% of incoming calls to the Contractor's telephone line that is blocked by a busy signal, in excess of three percent (3%), calculated on a quarterly basis, the Contractor shall credit against the NYSIF Program's Claims Administration Fee the amount of $(TBD) per quarter.

7.8.0 Program Claims Processing System Availability Guarantee and Credit Amount

7.8.1 ***Guarantee:*** The Contractor guarantees that the NYSIF Program's online claims processing system be available at least ninety-nine and five-tenths percent (99.5%) of the time excluding periods of scheduled down time which shall be reported in advance to the FUND and kept to a minimum, based on a 24 hours a Day, 7 Days a week availability.

7.8.2 ***Credit Amount:*** For each .01 to .25% below the standard of ninety-nine and five-tenths percent (99.5%) that the Contractor's online claims processing system for the NYSIF Program, based on a 24 hours a Day, 7 Days a week availability, excluding periods of scheduled down time, which shall be reported in advance to the FUND and kept to a minimum, is not available, as calculated on a quarterly basis, the Contractor shall credit

against the NYSIF Program's Claims Administration Fee the amount of $(TBD) per each quarter.

ARTICLE VIII: MODIFICATION OF PROGRAM SERVICES

8.1.0 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 FUND determines that any design elements or requirements of the Agreement must be revised, the FUND shall notify the Contractor of any such revisions and shall provide the Contractor with a reasonable time within which to implement such revisions.

8.2.0 In the event the FUND requires changes in Program design elements or requirements of the Agreement, the FUND shall notify the Contractor of such changes and shall provide the Contractor with reasonable notice to implement such changes.

8.3.0 To the extent that any of the events as set forth in this Article shall take place and constitute a material and substantial change in the delivery of services that are contemplated in accordance with the terms of the NYSIF Program as of the Effective Date and which the Contractor is required to perform or deliver under the Agreement, the Contractor may submit a written request to the FUND to initiate review of the fee(s) received by the Contractor for services provided and guarantees made by the Contractor under the terms of the Agreement, accompanied by appropriate documentation. The FUND reserves the right to request, and the Contractor shall agree to provide additional information and documentation the FUND deems necessary to verify that an increase in the fee(s), or modification of the guarantees is warranted. The FUND will agree to modify the fee(s) to the extent necessary to compensate the Contractor for documented additional costs determined by the FUND to be reasonable and necessary. The FUND will agree to modify guarantees as determined by the FUND to be necessary to reflect NYSIF Program modifications. Should the FUND approve the Contractor's request to modify the fee(s) and/or guarantees, such approval shall be subject to written amendment and approval by OSC and the AGSC. The Contractor shall implement changes as required by the FUND with or without final resolution of any fee proposal.

8.4.0 Any changes made by DCS to the scope of its contract with the Contractor for Prescription Drug Program Services after execution of this Agreement, including but not limited to the request to

include any individual independent Network Pharmacy(ies), shall have no impact on this Agreement or cost thereunder, unless the change is agreed to by NYSIF.

ARTICLE IX: ENROLLMENT INFORMATION AND RECORDS

9.1.0 The Contractor shall maintain records from which may be determined at all times the names of all Claimants insured hereunder and the benefits in force for each such Claimant, together with the date when any insurance became effective and the effective date of any change in benefits.

9.2.0 The FUND shall transmit enrollment information provided by the Claimant to the Contractor for the NYSIF Program in an electronic format consistent with Section 6.6.2 of this Agreement. The eligibility rules and the enrollment reports generated as a result of these eligibility rules shall be the sole means of determining valid enrollment for benefits under the NYSIF Program.

9.3.0 The FUND and the Claimants shall furnish to the Contractor all information that the Contractor may reasonably require with regard to any matters pertaining to the enrollment of Claimants under this Agreement. A person will not be entitled to or deprived of benefits under the Agreement due to clerical errors.

9.4.0 The FUND agrees to provide the Contractor with reasonable access to records of the FUND which may have a bearing on the benefits provided by the Contractor or calculation of the Contractor's Claims Administration Fee as set forth under Article XIV of this Agreement.

ARTICLE X: DATA SHARING AND OWNERSHIP

10.1.0 All claims and other data related to the NYISF Program is the property of the State. Upon the request of the FUND, the Contractor shall share appropriate claims data with FUND 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 Claimant, the Contractor shall not share, sell, release, or make the data available to third parties in any manner without the prior consent of the FUND. The FUND understands that the Contractor is required to share certain claims data with pharmaceutical manufacturers for purposes of obtaining for the NYSIF Program all Pharma Revenue due it under the Agreement. The

Contractor shall inform the FUND of the types of data being shared for these specific authorized purposes.

ARTICLE XI: NYSIF PROGRAM CLAIMS REIMBURSEMENT

The Program shall be charged for dispensed drugs consistent with the provisions of this Article.

11.1.0 General Provisions

11.1.1 All discounts and dispensing fees for Brand, Generic Drugs and Specialty Drugs/Medications must be guaranteed for the entire term of this Agreement without qualification or condition. In addition, the Contractor's Compound Drug pricing methodology set forth in Article XI of this Agreement must be guaranteed for the entire term of this Agreement without qualification or condition.

11.2.0 Average Wholesale Price (AWP) Source and Brand, Generic Drug, and Compound Drug Classification

The pricing formulas set forth in this Article are based on the classification of drugs as either Brand Drugs, Generic Drugs, or Compounded Drugs.

11.2.1 Throughout the term of the Agreement, the Contractor shall utilize (to be determined from the Contractor's Proposal) as the source of Average Wholesale Price (AWP) information for purposes of calculating Ingredient Cost unless the parties mutually agree in writing to use a different source for AWP information. The AWP used for pricing purposes during claim adjudication should be the AWP in effect on the date the drug was filled.

11.2.2 During the term of the Agreement, in the event the national reporting service (as identified by the Contractor in its Proposal) changes its methodology related to any of the information fields used in the FUND's classification of Brand and Generic Drugs, or its methodology for coding drugs in connection with these information fields, the Contractor is obligated to inform the FUND in writing of such changes within 30 Days of learning of such changes. Upon written notification, the Parties will meet and agree in writing to any Brand and/or

Generic Drug classification changes that may be necessary to enable the Parties to maintain the same economic position and obligations as are set forth in the Agreement.

11.2.3 Notwithstanding any other provision of the Agreement to the contrary, if, during the term of this Agreement, industry events have caused the Contractor's source of AWP to become obsolete or no longer available, the FUND and the Contractor shall agree on revised pricing terms. In no event shall the NYSIF Program's actual costs for drugs increase as the result of new pricing terms. The Contractor shall notify the FUND in writing as soon as any information indicating a problem with the future use of the Contractor's AWP source is received. Within two weeks of the initial notification, the Contractor shall submit a written detailed proposal to NYSIF for effectively revising pricing terms including but not limited to a file containing the Contractor's pricing for all drugs dispensed during the prior six months utilizing the current AWP source and the Contractor's revised pricing for such drugs using the proposed methodology. The Contractor's proposal should ensure continued alignment of the Contractor's interests with those of the NYSIF Program. Final determination of the revised pricing terms will be made by the FUND.

11.2.4 ***Classification Methodology General***

11.2.4a Drugs shall be classified for pricing purposes under this Agreement in accordance with the FUND classification determinations based on the definitions contained in Article I of this Agreement. No later than November 15th of each NYSIF Program year, the Contractor shall submit for FUND written approval a file containing all NDCs dispensed through the NYSIF Program during the prior year and the classification of each NDC derived from application of the Contractor's electronic classification process. To the extent the Contractor's electronic process results in classifications inconsistent with NYSIF determinations, the Contractor commits to modify its classification methodology to replicate the results of the FUND's determination, including the steps set forth in Section 11.2.4b below. The FUND's determination shall be final.

11.2.4b To the extent the electronic process fails to comprehensively replicate drug classifications specified by the NYSIF Program in Exhibit B, the Requests for

Proposals entitled "Pharmacy Benefit Services for The Empire Plan, Excelsior Plan, Student Employee Health Plan and the New York State Insurance Fund Workers' Compensation Prescription Drug Programs," of this Agreement consistent with the definitions of Brand and Generic Drugs set forth in Sections 1.3.0 and 1.29.0 of this Agreement, the Contractor agrees to modify to the extent possible its electronic processing system before January 1, 2014, and to undertake all other necessary manual steps to ensure that the result of the prescription processing process from a cost basis to the NYSIF Program is in accordance with the FUND's determination of classification.

11.2.4c The Contractor shall conduct a year-end reconciliation each NYSIF Program Year to ensure that the claim amount charged to the NYSIF Program is in accordance with the definition of Brand and Generic Drugs set forth in Sections 1.3.0 and 1.29.0 of this Agreement. The reconciliation will include claims paid during the Plan Year and is to be completed by February 15th of the following year. If the FUND's review of the Contractor's reconciliation indicates an adjustment is required, then the FUND reserves the right to make an adjustment to the Contractor's submitted reconciliation. The Contractor shall credit or debit the Plan as applicable no later than 30 Days following the date of reconciliation.

11.3.0 Brand Drug Determination Methodology

11.3.1 The classification of a drug as a Brand Drug for the purpose of applying the appropriate pricing formula shall be based on the definition of the Brand Drug set forth in Section 1.3.0. The Contractor shall utilize an electronic process for claims processing using [Source to be determined by Contractor's Proposal] indicators to determine classification with the results subject to the review and approval of the FUND for consistency with Section 1.3.0 prior to commencement of the contract on January 1, 2014. The Contractor agrees that the FUND's determination shall be final.

11.3.2 To the extent the electronic process fails to comprehensively replicate drug classifications proposed by the NYSIF Program in Exhibit B, the Requests for Proposals entitled "Pharmacy Benefit Services for The Empire Plan, Excelsior Plan, Student Employee

Health Plan and the New York State Insurance Fund Workers' Compensation Prescription Drug Programs," of this Agreement consistent with the definition of Brand Drug set forth in Section 1.3.0 of this Agreement, the Contractor agrees to modify its electronic processing system before January 1, 2014, and to undertake all other necessary manual steps to ensure that the result of the prescription processing process to the NYSIF Program is in accordance with the correct classification.

11.3.3 To the extent the Contractor cannot process claims consistent with the FUND's Brand Drug determinations, the reconciliation process set forth in Section 11.2.4c above will be performed.

11.4.0 Generic Drug Determination Methodology

11.4.1 The classification of a drug as a Generic Drug for the purpose of applying the appropriate pricing formula shall be based on the definition of Generic Drug set forth in Section 1.29.0 of this Agreement. The Contractor shall utilize an electronic process using [Source to be determined by Contractor's Proposal] indicators to establish classification with the results subject to the review and approval of the FUND prior to commencement of the contract on January 1, 2014. The Contractor agrees that the FUND's determination shall be final.

11.4.2 To the extent the electronic process fails to comprehensively replicate the drug classification proposed by the Program in Exhibit B, the Requests for Proposals entitled "Pharmacy Benefit Services for The Empire Plan, Excelsior Plan, Student Employee Health Plan and the New York State Insurance Fund Workers' Compensation Prescription Drug Programs," of this Agreement consistent with the definition set forth in 1.27.0 of this Agreement, the Contractor agrees to modify its electronic processing system before January 1, 2014, including setting appropriate Copayment levels as required, and to undertake all other necessary manual steps to ensure that the result of the prescription processing process to the NYSIF Program is in accordance with the correct classification.

11.4.3 To the extent the Contractor cannot process claims consistent with the FUND's Generic Drug determinations, the reconciliation process set forth in Section 11.2.4c above will be performed.

11.5.0 Compound Drug Determination Methodology

The Contractor shall implement a process to review Compound claim submissions for compliance with the contracted definition. The classification of a drug as a Compound Drug for the purpose of applying the appropriate pricing formula shall be based on the definition of Compound Drug set forth in Section 1.9.0 of this Agreement.

11.6.0 Program's Lesser of Logic

The NYSIF Program's Lesser of Logic applies to all claims processed under the NYSIF Program. Retail Generic Prescriptions assigned a MAC price shall be charged to the NYSIF Program at the following Lesser of Logic: the lowest of the Pharmacy-Submitted Ingredient Cost plus dispensing fee; the Pharmacy's Usual and Customary Price (no dispensing fee is to be paid on claims when the pricing basis is Usual and Customary); the AWP discount contracted with the Network Pharmacy plus dispensing fee; or the Maximum Allowable Cost plus dispensing fee. Retail Brand Prescriptions and Generic Prescriptions that are not assigned a MAC price shall be charged to the NYSIF Program at the following Lesser of Logic: the lowest of the Pharmacy's Usual and Customary Price (no dispensing fee is to be paid on claims when the pricing basis is usual and customary); the Discounted Ingredient Cost contracted with Network Pharmacy plus dispensing fee; or the Pharmacy-submitted Ingredient Cost plus dispensing fee. Mail Service Pharmacy Generic Prescriptions shall be charged to the NYSIF Program at the following Lesser of Logic: The lowest of the Pharmacy-Submitted Ingredient Cost plus dispensing fee; the Pharmacy's Usual and Customary Price (no dispensing fee is to be paid on claims when the pricing basis is Usual and Customary; the Minimum Guaranteed Discounted Ingredient Cost for Brand Drugs off of AWP plus dispensing fee; the Maximum Allowable Cost plus dispensing fee; or the WCB Fee Schedule. Mail Service Pharmacy Brand and Specialty Pharmacy Brand and Generic Prescriptions shall be charged to the Plan at the following Lesser of Logic: the lowest of the Pharmacy-Submitted Ingredient Cost plus dispensing fee; the Pharmacy's Usual and Customary Price (no dispensing fee is to be paid on claims when the pricing basis is usual and customary); the Guaranteed Discounted Ingredient Cost off of AWP plus dispensing fee; or the WCB Fee Schedule. Once the Lesser of Logic has been applied, the pricing methodology resulting in the lowest claim cost to the NYSIF Program is determined, and to that amount any applicable sales tax is added.

11.7.0 Mandatory Generic Substitution at Retail and Mail

The Contractor shall:

11.7.1 Apply mandatory generic substitution to all specific NDC's of Brand Drugs for which there is an FDA approved A-rated Generic Drug (including but not limited to, Generic Drugs rated AA, AB, AN, AO, AT, etc) or an authorized Generic Drug as permissible by NYS law. Network Pharmacies shall comply with all state laws related to mandatory generic substitution. The Contractor shall apply mandatory generic substitution to all specific NDC's (inactive or active) of Brand Drugs. The NYSIF Program's mandatory generic substitution provisions shall apply to any claim where the A-rated or authorized Generic Drug is required or permitted to be substituted under state law. Mandatory generic substitution provisions will not apply to B-rated or unrated Generic Drugs or in the unlikely event that state law prohibits dispensing of the A-rated or authorized Generic Drug.

11.7.2 Monitor the pharmaceutical industry on behalf of the FUND to identify Generic Drugs expected to enter the market. Prior to the actual introduction of the Generic Drug to market, the Contractor shall inform the FUND of anticipated shipping dates of the first Generic Drug introduced into the market for one or more strengths of a particular Brand Drug.

11.7.2a Charge the Program based on the NYSIF Program MAC List price assigned to the GCN of the dispensed Brand Drug subject to the NYSIF Program's Lesser of Logic set forth in Section 11.6.0 of this Agreement, plus the applicable dispensing fee as set forth in Section 11.8.3m of this Agreement.

11.7.2b Receive FUND written approval for any and all exceptions to the NYSIF Program's mandatory generic substitution provisions. Following commencement of mandatory generic substitution, the Contractor must receive FUND approval prior to suspending enforcement of the NYSIF Program's mandatory generic substitution provisions.

11.7.2c Maintain an electronic claims processing system capable of obtaining information from Network Pharmacies to ensure consistent enforcement of the NYSIF Program's mandatory generic substitution provisions. In particular, the claims processing system must be capable of capturing information concerning the availability of the Generic Drug at the Network Pharmacy submitting the

electronic claim. If a Generic Drug is available to be dispensed by the Network Pharmacy, the NYSIF Program's mandatory generic substitution rules shall be applied. If the Network Pharmacy does not have the A-rated or authorized Generic Drug in stock, mandatory generic substitution provisions will not apply and the Enrollee shall receive the Brand Drug and the NYSIF Program charged based on Generic Drug pricing. The Contractor's claims processing system must reject, with appropriate messaging, claims for Brand Drugs subject to mandatory generic substitution that are submitted with a DAW-0 code requiring resubmission of the claim (since a DAW-0 code provides no indication of Generic Drug availability in the Pharmacy). Similar rules shall be applied to other DAW submission codes as necessary to ensure consistent, accurate application of the NYSIF Program's mandatory generic substitution requirements. These rules are specified in Section 6.12.4 of this Agreement.

11.7.3 Immediately notify the FUND in writing of changes (from brand to generic or generic to brand) in the NDC classification submitted by the Contractor pursuant to Section 11.2.4a of this Agreement.

11.8.0 Retail Pharmacy Network Claims

11.8.1 The cost of all Covered Drugs dispensed at Network Pharmacies shall be charged to the NYSIF Program consistent with the requirements set forth in this section, including but not limited to application of the Lesser of Logic set forth in Section 11.6.0 of this Agreement. Under no circumstances may the Claimant be charged costs not specifically provided for under the NYSIF Program benefit design.

11.8.1a The Contractor shall ensure that the Network Pharmacy will charge the NYSIF Program the Discounted Ingredient Cost as determined through the application of the Lesser of Logic detailed in Section 11.6.0 of this Agreement plus the Contractor's applicable pharmacy contracted dispensing fee set forth in 11.11.3 for all drugs dispensed through a Network Pharmacy.

11.8.1b The Contractor shall administer a control process at point of service to protect the NYSIF Program from any inflated AWP costs associated with "repackaged" drugs charged to the NYSIF Program.

11.8.2 Retail Pharmacy Network Brand Drug Pricing

11.8.2a The Contractor shall charge the NYSIF Program utilizing Pass-through Pricing for all Brand Drugs dispensed to Claimants through the Network Pharmacies. The Contractor's contracted discount off of AWP and pharmacy contracted dispensing fee(s) for Brand Drugs shall be applicable to all individual Prescriptions for Brand Drugs dispensed to Claimants from a Network Pharmacy.

11.8.2b The Contractor shall use the following Ingredient Cost and dispensing fee to charge the NYSIF Program for each Prescription for a covered Brand Drug dispensed by a Network Pharmacy throughout the term of the Agreement subject to application of the Lesser of Logic as set forth in Section 11.6.0 of this Agreement.

11.8.2b(1) ***Ingredient Cost of Brand Drug Dispensed at Retail Pharmacy***

Pass-through Pricing based on the terms of the Contractor's agreement with the dispensing Pharmacy related to Brand Drugs. (Pricing is subject to an overall annual minimum discount of (TBD) % off the aggregate AWP and annual maximum dispensing fee of (TBD) for all Brand Drugs dispensed through Network Pharmacies.)

11.8.2c The Contractor shall guarantee an overall minimum discount off of the aggregate AWP for all Brand Drugs dispensed at Retail Network Pharmacies as defined in the RFP. The Contractor guarantees the Program that its management of Brand Drug costs dispensed by pharmacies shall result in the NYSIF Program achieving the Contractor's proposed overall Guaranteed Minimum Discounts of [TBD] during the Plan Year. The discounts achieved off of the aggregate AWP for all Brand Drugs as a result of Pass-through Pricing will be calculated utilizing the following formula: 1 minus (Sum of Ingredient Costs of dispensed Brand Drugs divided by sum of AWP of dispensed Brand Drugs). The aggregate discount calculation will be based on Pharmacy Prescriptions filled with a Brand Drug where the NYSIF Program was the primary payer. Claims submitted for

secondary payer consideration, Compound Drug claims, Non-Network claims, and claims submitted by governmental entities must be excluded from the aggregate discount calculation. In addition, claims with a calculated AWP discount greater than 50% will be excluded pending receipt of supporting documentation by the Contractor and verification by the FUND as to the validity of the calculated discount; and

(Amended April 4, 2012)

11.8.2d If the overall aggregate discounts obtained, as calculated utilizing the formula set forth in the prior paragraph, are less than the Guaranteed Minimum Discounts of [TBD], the Contractor shall reimburse the NYSIF Program the difference between the Ingredient Cost the NYSIF Program was charged utilizing Pass-through Pricing and the Ingredient Cost the NYSIF Program would have been charged if the Guaranteed Minimum Discount off of the aggregate AWP of [TBD] had been obtained. The NYSIF Program will be credited annually for this difference in Ingredient Cost. The NYSIF Program shall retain the benefit of any cost savings, in excess of the Contractor proposed Guaranteed Minimum Discounts off the aggregate AWP for all Brand Drugs dispensed by pharmacies.

This calculation shall be performed for each NYSIF Program year based on claims paid for each incurred year. Specifically, the Contractor shall perform a reconciliation to include claims incurred in each Program Year and paid through June of the following Program Year. The reconciliation shall be submitted to the FUND on July 31st. If the FUND's review of the Contractor's calculations indicates an adjustment to the calculation is required, then the FUND reserves the right in their sole discretion to make an adjustment to the Contractor's calculations. ~~The calculations must be completed by February 15th of the following year.~~ Upon Approval by the FUND, ~~T~~the Contractor shall pay/credit the NYSIF Program the applicable amount, if any, within 30 Days. ~~following the February 15th calculation. If the FUND's review of the Contractor's calculations indicates an adjustment to the calculation is required, then the FUND reserves the right in its sole discretion to make an adjustment to the Contractor's calculations. On July 31st following each Plan Year, the Contractor shall perform a reconciliation to include claims incurred in each~~

~~NYSIF Program year and paid through June of the following Program year. Based on this reconciliation, the FUND shall receive an adjustment, if necessary, within 30 Days following the date of the reconciliation.~~ The NYSIF Program shall retain the benefit of any cost savings, in excess of the Contractor's Guaranteed Minimum Discount off the aggregate AWP of [TBD]. Any shortfall in the Guaranteed Minimum Discount cannot be recovered by the Contractor in subsequent years.

11.8.3 Retail Pharmacy Network Generic Pricing

The Contractor shall:

11.8.3a Maximize the discount achieved on behalf of the Program for Generic Drugs dispensed by Network Pharmacies. The Contractor or its Key Subcontractor, if any, must manage the Programs' MAC List consistent with, or better than, their most aggressive generic pricing list used to reimburse Pharmacies. The Contractor shall charge the NYSIF Program utilizing Pass-through Pricing for all Generic Drugs dispensed to Claimants through the Network Pharmacies.

(Amended April 4, 2012)

11.8.3b Create and maintain a single NYSIF Program-Specific Maximum Allowable Cost (MAC) List for called the Program MAC List setting the Ingredient Cost ~~maximum price~~ the NYSIF Program shall be charged, and the amount the dispensing Network Pharmacy shall be paid, for the Ingredient Cost for the drugs required to be included on the Program MAC List. Under no circumstances shall the MAC price assigned exceed the Discounted Ingredient Cost to the NYSIF Program achieved ~~through Pharmacy submitted pricing or pricing achieved~~ by using the Contractor's highest contracted Retail ~~and Mail Service~~ Pharmacy Brand Guaranteed Maximum Discount off of AWP of [TBD] applied to the AWP of the dispensed Generic Drug.

11.8.3c Assign a MAC price to all NDCs of drugs included within a GPI/GCN, including NDCs of all Brand Drugs, containing an A-rated or authorized Generic Drug form of the original Brand Drug in the GPI/GCN. The Contractor shall add the GPI/GCN to the Programs' MAC List and set a MAC price for the GPI/GCN in accordance with Section 6.13.1 of this Agreement. The provisions of this section

require that MAC pricing be applied in no event later than 21 Days after the first shipment of the first Generic Drug from the manufacturer to a wholesaler or retailer. For those Generic Drugs with an established GPI/GCN that are already subject to MAC pricing the Contractor is required to immediately apply MAC pricing to any generic NDC added to the GPI/GCN. All A-rated or authorized Generic Drugs shall be MAC'd in all instances including, but not limited to circumstances in which the FUND in its sole discretion decides not to enforce mandatory generic substitution of the Brand Drug in that GPI/GCN. There shall be one MAC price applicable to all NDCs included in the GPI/GCN on the Programs' MAC List. The MAC price shall be consistent with the process in Section 11.8.3b. However depending on particular market factors, it may be in the best interests of the NYSIF Program, and therefore appropriate, for more than one MAC price to be assigned within a GPI/GCN. Such situations would require that the Contractor provide any information the FUND deems necessary to support such action and obtain prior written approval from the FUND.

11.8.3d Assign a MAC price to all NDCs of B-rated or unrated Generic Drugs included within a GPI/GCN that does not include an A-rated or authorized Generic Drug. The Contractor shall add the GPI/GCN to the Programs' MAC List and set a MAC price for the Generic Drug NDCs included in the GPI/GCN as soon as practicable, but in no event later than 14 Days after the first shipment of the first Generic Drug from the manufacturer to a wholesaler or retailer. The Contractor shall not apply the MAC price to the NDC(s) for Brand Drugs dispensed in the GPI/GCN and shall not enforce the NYSIF Program's mandatory generic substitution provisions for Brand Drugs dispensed in this GPI/GCN. There shall be one MAC price applicable to all Generic Drug NDCs included in the GPI/GCN. However depending on particular market factors, it may be in the best interests of the NYSIF Program, and therefore appropriate, for more than one MAC price to be assigned within a GPI/GCN. Such situations would require that the Contractor provide any information the FUND deems necessary to support such action and obtain prior written approval from the FUND.

11.8.3e Charge the NYSIF Program for non-MAC'd Generic Drugs dispensed utilizing pass-through pricing of the Contractor's pharmacy contracted discount applied to the AWP of the dispensed Generic Drug. The only Non-MAC'd Generic Drugs shall be Generic Drugs included in GPIs/GCNs required to be on the Programs' MAC List but which have not yet been assigned a MAC price within the required time frame.

11.8.3f The Contractor shall inform the FUND of any market based condition which makes the strict compliance with Section 11.8.3b-11.8.3e of this Agreement contrary to the financial interests of the NYSIF Program. The FUND in its sole discretion may waive such requirements.

11.8.3g Monitor the Programs' MAC List pricing to ensure that NDCs contained in GPIs/GCNs subject to MAC pricing are paying at the MAC price after application of the NYSIF Program's Lesser of Logic provisions. The Contractor shall notify the NYSIF Program of any GPIs/GCNs subject to MAC pricing in which the majority of claims are processing at a basis other than the MAC price.

11.8.3h Agree that there shall be no increases to Programs' MAC List prices where such adjustment is intended to limit the discount achieved on behalf of the NYSIF Program to the Guaranteed Minimum Discount off of the aggregate AWP as set forth in Section 11.8.3m below, for all Generic Drugs dispensed by Network Pharmacies during the Program year.

11.8.3i Provide to the FUND full access to the Programs' MAC List used to price Generic Drugs dispensed by Network and Mail Service Pharmacies for the NYSIF Program. The Contractor must be prepared to provide valid documented market rationale to support their Programs' MAC pricing should the FUND request this information. In order to protect the NYSIF Program's financial interests from the date of the award until the termination date of the Agreement, the Contractor must agree that any <u>increases</u> to the Programs' MAC pricing must be justified to the FUND with valid documented market rationale. Following selection, the Contractor shall manage the content of the Programs' MAC List consistent with the requirements of this Agreement. Prices assigned to required new additions to

the Programs' MAC List shall be equivalent to the Contractor's most aggressive MAC price for that drug. Throughout the term of the Agreement, the Contractor commits to use its best efforts to maintain the aggregate effectiveness of its Programs' MAC List. The Contractor must ensure that MAC pricing is reduced to an appropriate level based on any change in market conditions such as increased competition within a GPI/GCN.

11.8.3j The Contractor shall strictly enforce all requirements of the NYSIF Program's mandatory generic substitution provision as detailed in Section 11.7 of this Agreement.

11.8.3k The Contractor guarantees that its management of Generic Drug costs dispensed by Network Pharmacies, including maintenance of the Programs' specific MAC List, and application of pricing provisions related to Generic Drugs that do not meet the requirements for inclusion on the Programs' specific MAC List, shall result in the NYSIF Program achieving the Contractor's overall Guaranteed Minimum Discount off of the aggregate AWP as set forth in Section 11.8.3m below, for all Generic Drugs dispensed by Network Pharmacies during the Program year. The discount achieved off of the aggregate AWP for all Generic Drugs as a result of Pass-through Pricing shall be calculated utilizing the following formula: 1 minus (Sum of Ingredient Costs of dispensed Generic Drugs at Retail and Mail Service Pharmacies divided by sum of AWP of dispensed Generic Drugs). The aggregate discount calculation shall be based on Network Pharmacy Prescriptions filled with a Generic Drug where the NYSIF Program was the primary payer (including Enrollee submitted claims). Claims submitted for secondary payer consideration, Compound Drug claims, and claims submitted by governmental entities are excluded from the aggregate discount calculation. In addition, claims with a calculated AWP discount greater than 90% and a total AWP greater than $500 shall be excluded pending receipt of supporting documentation by the Contractor and verification by the FUND as to the validity of the calculated discount. The setting of an overall minimum discount off of the aggregate AWP for all Generic Drugs dispensed at Network and Mail Service Pharmacies shall in no way modify the Contractor's contractual obligation to

maximize the NYSIF Program's aggregate discount above the Contractor's overall Guaranteed Minimum Discount off of the aggregate AWP.

(Amended April 4, 2012)

11.8.3l If the overall aggregate discount obtained, as calculated utilizing the formula set forth in Section 11.8.3k, above, is less than the Guaranteed Minimum Discount set forth in Section 11.8.3m, the Contractor shall reimburse the NYSIF Program the difference between the Ingredient Cost the NYSIF Program was charged utilizing Pass-through Pricing and the Ingredient Cost the NYSIF Program would have been charged if the Guaranteed Minimum Discount off of the aggregate AWP set forth in Section 11.8.3m for all Generic Drugs was obtained.

This calculation shall be performed for each Program year based on claims paid for each incurred year. Specifically, the Contractor shall perform a reconciliation to include claims incurred in each Program Year and paid through June of the following Program Year. The reconciliation shall be submitted to the FUND on July 31st. If the FUND's review of the Contractor's calculations indicates an adjustment to the calculation is required, then the FUND reserves the right in their sole discretion to make an adjustment to the Contractor's calculations. ~~The calculations must be completed by February 15th of the following year.~~ Upon Approval by the FUND, ~~T~~the ~~The calculations must be completed by February 15th of the following year. The~~ Contractor shall pay/credit the NYSIF Program the applicable amount, if any, within 30 Days. ~~following the February 15th calculation. If the FUND's review of the Contractor's calculations indicates an adjustment to the calculation is required, then the FUND reserves the right in its sole discretion to make an adjustment to the Contractor's calculations. On July 31st following each Program Year, the Contractor shall perform a reconciliation to include claims incurred in each Program Year and paid through June of the following Program Year. Based on this reconciliation, the NYSIF Program shall receive an adjustment, if necessary, within 30 Days following the date of the reconciliation.~~ The NYSIF Program shall retain the benefit of any cost savings, in excess of the Contractor's Guaranteed Minimum Discount off the aggregate AWP set forth in Section 11.8.3m for all Generic Drugs dispensed by Network and Mail

Service Pharmacies. Any shortfall in the Guaranteed Minimum Discount set forth in Section 11.8.3m cannot be recovered by the Contractor in subsequent years.

11.8.3m The Contractor shall use the following Ingredient Cost and dispensing fee to charge the NYSIF Program for each covered Generic Drug dispensed by Retail Network Pharmacies throughout the term of the Agreement subject to the Lesser of Logic process set forth in Section 11.6.0 of this Agreement.

11.8.3m(1) ***Ingredient Cost of Generic Drug dispensed at Retail Pharmacy:***

Pass-through Pricing based on either the Programs' MAC List or the Contractor's pharmacy contracted discount applied to the AWP of the dispensed Generic drug for Generic Drugs not assigned a MAC. (Pricing is subject to an overall annual minimum discount of (TBD)% off of the aggregate AWP and maximum annual dispensing fee of (TBD) for all Generic Drugs dispensed through Network Pharmacies.)

11.8.4 <u>Retail Pharmacy Network Compound Drug Pricing</u>

Compound Drugs must be classified consistent with the definition in Section 1.9.0 of this Agreement.

The Contractor shall:

11.8.4a Implement the pricing methodology for Compound Drugs as set forth in Section 11.8.4d below. The Contractor's retail Brand Drug dispensing fee and the NYSIF Programs' "Lesser of Logic" will apply;

11.8.4b Process Compound Drug claims in a manner that verifies the validity of the claim as a Compound Medication according to the NYSIF Programs' definition of a Compound Drug and provides appropriate claim level control procedures to protect the financial interests of the NYSIF Program;

11.8.4c Conduct due diligence as well as audit Network Pharmacies to ensure that drugs are being properly classified as Compound Drugs consistent with the NYSIF Programs' definition of a Compound Drug and to ensure that claims are priced in

accordance with the methodology for Compound Medications as set forth in Section 11.8.4d below; and,

11.8.4d The Contractor shall use the following methodology to charge the NYSIF Program for each Prescription for a covered Compound Drug/Medication dispensed by a Network Pharmacy throughout the term of the Agreement. The NYSIF Program shall be charged the lesser of the following:

11.8.4d(1) [Insert Contractor's proposed pricing methodology] or

11.8.4d(2) The Pharmacy Submitted Cost equaling the Total AWP of all ingredients in the Compound as submitted by the Pharmacy. (eg, AWP of NDC 1 plus AWP of NDC 2 plus AWP of NDC 3); OR

11.8.4d(3) The Pharmacy's Usual and Customary price as submitted by the Pharmacy less the dispensing fee plus the sales tax when applicable,

The NYSIF Program shall be charged the lowest Ingredient Cost derived through application of the above "Lesser of Logic" process plus the dispensing fee (when applicable).

11.9.0 <u>Mail Service Pharmacy Process Pricing – Brand Drugs, Generic Drugs, and Compound Drugs</u>

The Contractor shall:

11.9.1 Consistently enforce and administer all provisions of the NYSIF Program (including but not limited to mandatory generic substitution, drug utilization review, prior authorization, refill too-soon edits, etc.) to the claims dispensed through the Mail Service Pharmacy Process, consistent with the processing of claims through the Retail Pharmacy Network process.

11.9.2 Charge the NYSIF Program for those drugs dispensed to the Claimant in original manufacturer packaging, based on the Contractor's source of AWP for the 11 digit NDC of the package size dispensed through the Mail Service Pharmacy Process, subject to MAC pricing for Generic Drugs. If the drug is not dispensed to the Claimant in original manufacturer packaging (i.e., dispensed from bulk), the NYSIF Program shall be charged

based on the Contractor's source of AWP for the 11 digit NDC of the package size from which the drug was originally dispensed by the Mail Service Pharmacy Process Facility, subject to MAC pricing for Generic Drugs. If the drug is dispensed from a bulk package size for which no AWP is reported in the Contractor's AWP source, the NYSIF Program shall be charged based on the reported AWP for the NDC of the largest package size contained in the Contractor's AWP source, subject to MAC pricing for Generic Drugs. The NYSIF Program shall not be charged based on an NDC assigned to repackaged drugs or based on package sizes prepared by special arrangement with the original manufacturer unless such packaging offers a net savings to the NYSIF Program.

11.9.3 Charge the NYSIF Program based on the Contractor's pricing terms and dispensing fees applicable to brand, generic, and Compound Drug claims as set forth in 11.9.4, 11.9.5, and 11.9.6 for all Prescriptions submitted through the Mail Service Pharmacy Process. The NYSIF Program's Lesser of Logic shall be applied.

11.9.4 Mail Service Pharmacy Process - Brand Drug Pricing

The Contractor shall:

11.9.4a Classify Brand Drugs consistent with the definition in Section 1.3.0 of this Agreement as well as the methodology outlined in Section 11.3.0 of this Agreement.

11.9.4b Implement its fixed contracted Guaranteed Discount off of Average Wholesale Price (AWP) as set forth below in Section 11.9.4c, that shall be utilized to determine the Ingredient Cost of the Prescription to charge the NYSIF Program. The Contractor's Guaranteed Discount shall be applicable to all individual Prescriptions for Brand Drugs dispensed to Claimants through the Mail Service Pharmacy Process.

11.9.4c The Contractor shall use the following Ingredient Cost and dispensing fee to charge the NYSIF Program for each Prescription for a covered Brand Drug dispensed through the Mail Service Pharmacy Process throughout the term of the Agreement.

Brand Drug: Ingredient Cost: (TBD)% off AWP

Dispensing Fee: (TBD)

11.9.5 Mail Service Pharmacy Process - Generic Drug Pricing

The Contractor shall:

11.9.5a Classify Generic Drugs consistent with the definition in Section 1.29.0 of this Agreement.

11.9.5b The Contractor shall use the following Ingredient Cost and dispensing fee to charge the NYSIF Program for each Prescription for a covered Generic Drug dispensed through the Mail Service Pharmacy Process throughout the term of the Agreement subject to the Lesser of Logic process set forth in Section 11.6.0 of this Agreement.

Ingredient Cost of Generic Drug dispensed at Mail Service Pharmacy: Pass-through Pricing based on either the Programs' MAC List or the fixed, contracted Mail Service Pharmacy Guaranteed Discount off the equivalent Brand Drug as set forth in Section 11.9.4c for the dispensing of Generic Drugs not assigned a MAC. (Pricing is subject to an overall annual minimum discount of (TBD)% off of the aggregate AWP for all Generic Drugs dispensed through the Mail Services Pharmacy.)

Dispensing Fee: $(TBD)

11.9.5c The Contractor must guarantee an overall minimum discount off the aggregate AWP for all Generic Drugs dispensed through the Mail Service Pharmacy, as set forth in 11.8.3 of this Agreement.

11.9.6 Mail Service Pharmacy Process - Compound Drug Pricing

The Contractor shall:

11.9.6a Classify Compound Drugs consistent with the definition in Section 1.9.0 of this Agreement;

11.9.6b Implement its Pass-through Pricing methodology for Compound Drugs as set forth below in Section 11.9.6e. The Contractor's retail Brand Drug dispensing fee and the NYSIF Program's Lesser of Logic will apply;

11.9.6c Process Compound Drug claims in a manner that verifies the validity of the claim as a Compound Medication according to the NYSIF Program's definition and provides appropriate claim level control procedures to protect the financial interests of the NYSIF Program;

11.9.6d Conduct due diligence to ensure that drugs are being properly classified as Compound Drugs consistent with the NYSIF Program's definition of a Compound Drug and to ensure that claims are priced in accordance with the methodology for Compound Medications as set forth below in Section 11.9.6e below; and,

11.9.6e The Contractor shall use the following methodology to charge the NYSIF Program for each Prescription for a covered Compound Drug/Medication dispensed by the Mail Service Pharmacy Process throughout the term of the Agreement. The Contractor shall charge the NYSIF Program the lesser of the following:

11.9.6e(1) [Insert Contractor's proposed pricing methodology] or

11.9.6e(2) The Pharmacy Submitted Cost equaling the Total AWP of all ingredients in the Compound as submitted by the Pharmacy. (eg, AWP of NDC 1 plus AWP of NDC 2 plus AWP of NDC 3); OR

11.9.6e(3) The Pharmacy's Usual and Customary price as submitted by the Pharmacy less the dispensing fee plus sales tax when applicable.

The NYSIF Program shall be charged the lowest Ingredient Cost derived through application of the above "Lesser of Logic" process plus the guaranteed dispensing fee (when applicable).

Dispensing Fee: $(TBD)

11.10.0 <u>Enrollee Submitted Claims</u>

11.10.1 The cost to the NYSIF Program for Prescriptions for which non-network pharmacies submit direct claims for reimbursement shall be charged to the NYSIF Program. State

Workers' Compensation Board laws and regulations, specifically, Section 440 of Chapter V, of Title 12 NYCRR (New York Codes Rules and Regulations).

11.10.2 The Contractor shall utilize the following methodology to charge the NYSIF Program:

11.10.2a Brand Drugs, including Specialty Drugs/Medications, must be charged to the NYSIF Program at the New York State Workers' Compensation Board rates, currently a twelve percent (12%) discount off of AWP, plus a $4 Dispensing Fee.

11.10.2b Generic Drugs, including Specialty Drugs/Medications, must be charged to the NYSIF Program at the New York State Workers' Compensation Board rates, currently a twenty percent (20%) discount off of AWP, plus a $5 Dispensing Fee.

11.11.0 <u>Dispensing Fee</u>

11.11.1 The Guaranteed Dispensing Fees and Maximum Guaranteed Dispensing Fees set forth in 11.11.3 of this Section must be guaranteed for the term of this Agreement.

11.11.2 No dispensing fee shall be charged to the NYSIF Program for any claim that is paid on the basis of the Pharmacy's Usual and Customary price.

11.11.3 The Contractor dispensing fee for Brand Drugs, Generic Drugs and Compound Drugs dispensed by Network Pharmacies shall be Pass-through Pricing, subject to an annual aggregate Maximum Guaranteed Dispensing fee set forth below. The Contractor's Guaranteed Dispensing fees for Brand Drugs, Generic Drugs and Compound Drugs dispensed by the Mail Service Pharmacy Process and the Designated Specialty Pharmacy are set forth below:

11.11.3a Network Retail Pharmacy Guaranteed Maximum Dispensing Fee:

$(TBD) Per Brand Drug
$(TBD) Per Generic Drug
$(TBD) Per Compound Drug

11.11.3b Mail Service Pharmacy Process Guaranteed Dispensing Fee:

$(TBD) Per Brand Drug

$(TBD) Per Generic Drug

$(TBD) Per Compound Drug

11.11.3c Designated Specialty Pharmacy dispensing fees may vary based on the specific NDC of the drug dispensed. Specialty Pharmacy Program dispensing fees are set forth in Exhibit V.D.

11.11.4 The Level of dispensing fees achieved as a result of Pass-through Pricing will be calculated utilizing the following formula:

Total Retail Network dispensing fees paid by the NYSIF Program on an annual basis divided by the number of Final Paid Claims at Retail Network Pharmacies for each of Generic, Brand and Compound claims.

11.11.5 If the overall aggregate dispensing fees paid, as calculated utilizing the formula set forth in Section 11.11.4 of this Agreement are more than the Guaranteed Maximum Dispensing Fee proposed for each of Brand, Generic and Compound claims at Retail Network Pharmacies, the Contractor shall reimburse the NYSIF Program the difference between the Dispensing fee the NYSIF Program was charged utilizing Pass-through Pricing and the Dispensing Fee the NYSIF Program would have been charged if the Guaranteed Maximum Dispensing Fee had been obtained. The Contractor shall perform a reconciliation to include claims incurred in each Program Year and paid through June of the following Program Year. The reconciliation shall be submitted to the FUND on July 31st. If the FUND's review of the Contractor's calculations indicates an adjustment to the calculation is required, then the FUND reserves the right in their sole discretion to make an adjustment to the Contractor's calculations. Upon approval by the FUND, the Contractor shall pay/credit the Program the applicable amount, if any, within 30 (thirty) Days. ~~The NYSIF Program will be credited annually for this difference by February 15th.~~ The NYSIF Program shall retain the benefit of any cost savings in excess of the Guaranteed Maximum Dispensing Fees set forth in Section 11.11.3. Any shortfall in the Guaranteed Maximum Dispensing Fees set forth in Section 11.11.3 cannot be recovered by the Contractor in subsequent years.

11.12.0 Specialty Pharmacy Program Pricing

The Contractor shall:

11.12.1 Consistently enforce and administer all provisions of the NYSIF Program (including but not limited to mandatory generic substitution, drug utilization review, prior authorization, refill too-soon edits, etc.) to the claims dispensed through the Specialty Pharmacy Program, consistent with the processing of claims through the Retail and Mail Service Pharmacy Network processes.

11.12.2 Charge the Program for those drugs dispensed to the Claimant in original manufacturer packaging, based on the Contractor's source of AWP for the 11 digit NDC of the package size dispensed through the Specialty Pharmacy Program. If the drug is not dispensed to the Claimant in original manufacturer packaging (i.e., dispensed from bulk), the NYSIF Program shall be charged based on the Contractor's source of AWP for the 11 digit NDC of the package size from which the drug was originally dispensed by the Designated Specialty Pharmacy. If the drug is dispensed from a bulk package size for which no AWP is reported in the Contractor's AWP source, the NYSIF Program shall be charged based on the reported AWP for the NDC of the largest package size contained in the Contractor's AWP source. The NYSIF Program shall not be charged based on an NDC assigned to repackaged drugs or based on package sizes prepared by special arrangement with the original manufacturer unless such packaging offers a net savings to the NYSIF Program.

11.12.3 Charge the NYSIF Program based on the Contractor's pricing terms and dispensing fees applicable to brand and generic, Specialty Drug/Medication claims as set forth in Sections 11.12.4 through 11.12.7 for all Prescriptions submitted through the Specialty Pharmacy Program.

11.12.4 Classify Brand Drugs consistent with the definition in Section 1.3.0 of this Agreement as well as the methodology outlined in Section 11.3.0 of this Agreement.

11.12.5 Classify Generic Drugs consistent with the definition in Section 1.29.0 of this Agreement.

11.12.6 Subject to the terms of Section 11.2.2 as amended, implement its fixed contracted Guaranteed Discount off of Average Wholesale Price (AWP) of (TBD_% to determine the Ingredient Cost of the Prescription to charge the NYSIF Program. The Contractor's Guaranteed Discount shall be applicable to all individual Prescriptions for Brand Drugs and Generic Drugs dispensed to Claimants through the Specialty Pharmacy Program.

11.12.7 Act in the interests of the NYSIF Program when dispensing Generic Drugs through the Specialty Pharmacy Program by avoiding the dispensing of NDC's with higher AWPs unless market conditions exist making dispensing the more cost effective NDC impractical or impossible.

ARTICLE XII: 100% PHARMA REVENUE GUARANTEE

The Contractor is required to maximize savings to the NYSIF Program through negotiation of Pharma Revenue Agreements obtaining discounts or other consideration from manufacturers and passing through 100% of the value of the Pharma Revenue agreements to the NYSIF Program, including any consideration that would normally flow to the Contractor or Key Subcontractor(s) based on the NYSIF Program's utilization pursuant to the terms of those Pharma Revenue Agreements. In addition, all Pharma Revenue agreements with manufacturers and other entities applicable to the NYSIF Program must meet or exceed the Contractor's best existing Pharma Revenue agreements for all individual drugs ensuring that in no instance will the NYSIF Program receive less Pharma Revenue in any therapeutic class than other clients of the Contractor with a comparable benefit design and consistent preferred drug designations in the class provided the NYSIF Program's utilization of the drugs generating Pharma Revenue in the class is equal to or greater than those of other clients.

12.1.0 Negotiate Pharma Revenue agreements with manufacturers that maximize savings to the NYSIF Program, leveraging the significant enrollment of the NYSIF Program for each individual drug. The Contractor agrees that any Plan specific Pharma Revenue agreement shall derive total Pharma Revenue that meets or exceeds the Pharma Revenue derived from any other agreements the Contractor uses to administer its book of business for each individual drug.

12.2.0 Include the value of the guaranteed Pharma Revenue set forth in Section 12.9.7 as a credit in the development of Claims Administration Fees throughout the term of this Agreement.

12.3.0 Credit the NYSIF Program quarterly within 150 Days of the end of each quarter, the greater of 100% of the Pharma Revenue received or the minimum guaranteed amount set forth in Section 12.9.7.

12.4.0 Calculate and distribute Pharma Revenue to the NYSIF Program in a fully transparent and verifiable process. The Contractor agrees that all direct and indirect revenue arrangements with manufacturers, suppliers, or other vendors shall be disclosed and the revenue generated related or attributable to the NYSIF Program's utilization be credited to the NYSIF Program. The Contractor must agree that the records, methods and calculations utilized to total and distribute these amounts to the NYSIF Program are subject to audit by the FUND or other State auditors with authority under Article XVII and/or Appendices A & B of this Agreement. In addition, all agreements must be provided as necessary for the NYSIF Program to evaluate Preferred Drug List decisions including direct access to any manufacturer contracts in unredacted form, under which the NYSIF Program is entitled to derive Pharma Revenue pursuant to the terms of this Agreement.

12.5.0 Not enter into any agreement that has the effect of diverting, shortchanging, or trading off any form of Pharma Revenue that would otherwise be due the NYSIF Program for other consideration. There shall be no fees charged to the NYSIF Program or received from a manufacturer, separate from the Claims Administration Fee as described and authorized in this Agreement, by the Contractor for rebate or other Pharma Revenue administration. The Contractor agrees that it will not divert, shortchange, or trade off Pharma Revenue that would otherwise inure to the NYSIF Program's financial benefit for Claimant drug utilization in return for reduced drug acquisition costs or other monetary or non-monetary consideration from manufacturers.

12.6.0 Upon selection and as a condition of contract award and throughout the term of the Agreement, the contractor shall provide at the request of the State all information and documentation related to Pharma Revenue agreements, including but not limited to, full direct access by FUND staff or its agents to complete unredacted Pharma Revenue agreements pursuant to which the NYSIF Program derives Pharma Revenue**.**

12.7.0 Utilize manufacturer agreements for the NYSIF Program that meet or exceed the Contractor's best existing Pharma Revenue agreements for all individual drugs. If the Contractor's business model allows for more than one Pharma Revenue agreement with manufacturers, the Contractor agrees

that in no instance will the NYSIF Program receive less Pharma Revenue in any therapeutic class than other clients of the Contractor with a comparable benefit design and consistent preferred drug designations in the class provided the NYSIF Program's utilization of the drugs generating Pharma Revenue in the class is equal to or greater than those of other clients. The Contractor shall have a process satisfactory to the State to confirm compliance with this provision. The NYSIF Program shall receive a full pass-through of 100% of Pharma Revenue derived from any agreement with a pharmaceutical manufacturer. Where any Pharma Revenue contracts allow for higher Pharma Revenue for mail order claims, the Program will receive the full financial benefit of those higher rates receiving 100% of the Pharma Revenue derived from those agreements on mail order claims. If manufacturer agreements provide less Pharma Revenue for Mail Service Pharmacy or Specialty Pharmacy claims than retail claims for the same drug, the terms of the manufacturer agreement applicable to retail claims shall be applied to Program Mail Service Pharmacy and Specialty Pharmacy claims for purposes of calculating the amount of Pharma Revenue due the NYSIF Program.

12.8.0 Ensure the Contractor's Minimum Per Final Paid Claim Pharma Revenue Guarantee, set forth in Section 12.9.7 is not contingent upon the NYSIF Program's participation in any of the Contractor's formulary management or intervention programs. Nor shall the Contractor's Minimum Per Final Paid Claim Pharma Revenue Guarantee be contingent or dependent on the timing of any patent expirations and/or introduction of generic equivalent drugs, including but not limited to early and/or at risk Generic Drug launches. The NYSIF Program will review the guaranteed amount only in the event of legislative, regulatory, or judicial action excluding patent litigation not specific to the Contractor's business practices that serves to void existing Pharma Revenue agreements materially compromising the Contractor's ability to obtain contracted Pharma Revenue necessary to meet the Minimum Per Final Paid Claim Pharma Revenue Guarantee.

12.9.0 Calculate and perform an annual reconciliation of the Pharma Revenue credit to the Pharma Revenue earned. As part of this annual reconciliation the Contractor is required to:

12.9.1 Calculate the Pharma Revenue guarantee on all Final Paid Claims, incurred for the respective NYSIF Program Year. The Pharma Revenue guarantee shall be on the aggregate level, not separated for each therapeutic class.

12.9.2 Credit the NYSIF Program an amount calculated based on the following formula: if in any NYSIF Program Year, the Pharma Revenue realized and credited to the Program by the Contractor is less than the amount due the NYSIF Program as determined utilizing the minimum Pharma Revenue credit set forth in Section 12.9.7, the amount of the credit shall be equal to the difference between the reported Pharma Revenue credited to the NYSIF Program and the Contractor's Minimum Per Final Paid Claim Pharma Revenue Guarantee set forth in Section 12.9.7.

12.9.3 Submit calculations and documentation supporting the amount of Pharma Revenue reported and credited to the NYSIF Program for FUND review and approval. The Contractor shall provide all information and documentation deemed necessary by the FUND to verify the NYSIF Program was credited with all Pharma Revenue due it under the terms of this Agreement.

12.9.4 If at the close of any NYSIF Program Year, the Pharma Revenue credited to the NYSIF Program is greater than the higher of the amount derived through application of the Pharma Revenue guarantee formula or the actual Pharma Revenue realized by the NYSIF Program, upon notice and verification by the FUND, the FUND shall pay the Contractor the difference between the amount previously credited and the higher of the minimum Pharma Revenue guaranteed amount, set forth in Section 12.9.7, or actual Pharma Revenue realized during the NYSIF Program Year.

12.9.5 If at the close of any NYSIF Program Year, the Pharma Revenue credited to the NYSIF Program is less than the actual Pharma Revenue realized by the NYSIF Program, the Contractor shall pay the NYSIF Program the difference between what was previously paid and the full amount due to the NYSIF Program in accordance with Article XIV, Payment/(Credits) to/from the Contractor, of this Agreement.

12.9.6 Include such reconciliations as part of the annual rebate report. The FUND requires the Contractor's minimum Pharma Revenue guarantee, set forth in Section 12.9.7, be credited to the claims on the annual financial settlement regardless of the amount of Pharma Revenue that has been received by the Contractor.

12.9.7 The Minimum Pharma Revenue amount due the NYSIF Program on an annual basis shall be calculated according to the formula: Contractor's Minimum Per Final Paid Claim Pharma Revenue Guarantee multiplied by the number of Final Paid Claims incurred for the respective Plan Year. The Contractor's Minimum Per Final Paid Claim Pharma Revenue Guarantee based on claims incurred for the respective Plan Year is:

12.9.7a $(TBD) for the Plan Year 2014.

12.9.7b $(TBD) for the Plan Year 2015.

12.9.7c $(TBD) for the Plan Year 2016.

12.9.7d $(TBD) for the Plan Year 2017.

12.9.7e $(TBD) for the Plan Year 2018.

ARTICLE XIII: CLAIMS ADMINISTRATION FEE

13.1.0 The Claims Administration Fee is the fee that the Contractor charges the NYSIF Program for all administrative services provided by the Contractor. This includes the administration of the FUND's Prescription Drug Program, as may be modified from time to time. The Contractor guarantees that the Claims Administration Fee shall be $(TBD) per Final Paid Claim. The Contractor shall:

13.1.1 Agree that its Claims Administration Fee is binding for the entire term of this Agreement, unless agreed otherwise by both the State and the Contractor.

13.1.2 Implement any changes necessary to accommodate NYSIF Program modifications resulting from collective bargaining, legislation, or within the statutory discretion of the State within sixty (60) Days of notice, or as soon as practicable.

13.1.3 Agree not to request a higher Claims Administration Fee, and the FUND will not consider any modification to the Claims Administration Fee, that is not based on a material change to the NYSIF Program requiring the Contractor to incur additional costs. The determination of what constitutes a material change is at the sole discretion of the FUND. Implementation of an alternate formulary or multiple formularies shall not constitute a material change and the Contractor agrees to implement, if required, all alternative formularies at the Claims Administration Fee set forth in Section 13.1.0.

13.1.4 Submit detailed documentation of additional costs, over and above existing management costs, with any request for an increase in the Claims Administration Fee resulting from a material change in the benefit structure of the NYSIF Program. The FUND reserves the right to request and the Contractor must agree to provide any additional information and documentation the FUND deems necessary to verify that the request for an additional Claims Administration Fee is warranted. The FUND's decision to modify the Claims Administration Fee to the extent necessary to compensate the Contractor for documented additional costs incurred shall be at the sole discretion of the State.

13.1.5 Implement all benefit designs as required by the FUND with or without final resolution of any request for a Claims Administration Fee adjustment. Refusal to implement changes will constitute a material breach of this Agreement and the FUND will seek compensation for all damages resulting.

13.1.6 Agree the Claims Administration Fee shall be payable only for Final Paid Claims and that the NYSIF Program will not pay an additional Fee(s) or other charge for any claim that is denied prior to processing or any claim that is subsequently voided, reversed, or otherwise modified.

ARTICLE XIV: Payments/(Credits) to/(from) the Contractor

14.1.0 The Contractor agrees to manage such financial transactions in accordance with the following:

14.1.1 The NYSIF Program will reimburse the Contractor for claim payments and associated Claims Administration Fees no sooner than two (2) Business Days and no later than five (5) Business Days after receipt of an accurate invoice, following each weekly claims processing cycle. The data file layout and file transmission protocol will be mutually agreed upon by the selected Contractor and the FUND during the implementation period.

(Amended April 4, 2012)

14.1.2 Any credit amounts due from the Contractor to the FUND for failure of the Contractor to meet the performance guarantees set forth in this Agreement shall be applied as a credit against the Claims Administration Fees charged separately to the NYSIF Program in the ~~next~~ first invoice(s) processed after the performance guarantee has been calculated and agreed to by the FUND.

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14.2.0 Upon final audit determination by the FUND, any audit liability amount assessed by the FUND shall be paid/credited to the NYSIF Program within thirty (30) Days of the date of final determination.

14.3.0 Drug litigation recoveries and settlements shall be paid to the NYSIF Program within fifteen (15) Days from the Contractor's receipt of such recoveries and settlements.

14.4.0 One hundred and fifty (150) Days after the end of the first quarter, the Contractor shall pay/credit the NYSIF Program the greater of (1) the actual Pharma Revenue received on behalf of the NYSIF Program or 2) the minimum Per Final Paid Claim Pharma Revenue Guarantee, set forth in Section 12.9.7, multiplied by the number of Final Paid Claims incurred for the first quarter.

14.4.1 For each subsequent quarter of the Plan Year the calculations must be performed on a cumulative NYSIF Program Year-to-Date basis utilizing the calculations stipulated in Section 12.9.7. The Contractor shall pay/credit the NYSIF Program the greater cumulative amount less the amount previously credited for the NYSIF Program Year.

14.4.2 The Contractor shall perform a reconciliation by May 31st of each year and the incremental Pharma Revenue amount shall be paid/credit to the Plan within thirty (30) Days of May 31st.

14.4.3 At the May 31st Pharma Revenue reconciliation, to the extent that any amount is owed by the Contractor, the Contractor shall pay/credit the Plan within thirty (30) Days after the Final Pharma Revenue reconciliation for the amount owed.

14.5.0 The FUND will pay the Claims Administration Fee on a monthly basis thirty (30) Days after receipt of an accurate invoice. Any credit amounts due from the Contractor to the FUND for failure to meet the performance guarantees set forth in the Agreement shall be applied as a credit against the Claims Administration Fee charged to the NYSIF Program.

14.6.0 This Agreement is not subject to Article XI-A of NYS Finance Law. The Contractor agrees that Program Services provided under the Agreement shall continue in full force and effect for a minimum of at least thirty (30) days beyond the payment due date as set forth in this Article

XIV. If after the thirty-fifth (35) calendar day after receipt of an accurate invoice and claims data file, as set forth in this Article XIV, the Contractor has not yet received payment from the State for said invoice, the Contractor may proceed under the Dispute Resolution provision in Appendix B and the Agreement shall remain in full force and effect until such final decision is made, unless the Parties can come to a mutual agreement, in which case, the Agreement shall also remain in full force and effect.

ARTICLE XV: REPORTS AND CLAIM FILES

15.1.0 Annual Reports

15.1.1 ***Rebate True-up File:*** The Contractor is required to transmit a computerized file via secure transfer containing a yearly true-up of rebate records in a format specified by NYSIF. The true-up rebate file must match all of the billing records provided by the Contractor in the weekly pharmacy billing files. The report is due one hundred fifty (150) Days after the end of the Calendar Year. Issue resolution timeframe: within 1 week of the original submission.

15.2.0 Quarterly Reports

15.2.1 ***Rebate File:*** The Contractor is required to transmit a computerized file via secure transfer containing prescription rebate information for all earned rebates in a format specified by NYSIF. The pharmacy rebate records in the Rebate File must match all prescriptions billed to NYSIF by the Contractor. The report is due one hundred fifty (150) Days after the end of the quarter. Issue resolution timeframe: within 1 week of the original submission.

15.3.0 Monthly Reports

15.3.1 ***Card Issuance File:*** The Contractor is required to submit a computerized file via secure transfer with the names of all NYSIF Claimants who have been issued a permanent ID card that is used when filing their injury-related prescriptions. The Contractor is required to submit this report in the current format specified by NYSIF in Exhibit B, the Requests for Proposals entitled “Pharmacy Benefit Services for The Empire Plan, Excelsior Plan, Student Employee Health Plan and New York State Insurance Fund Workers’

Compensation Prescription Drug Programs," of this Agreement unless otherwise specified by NYSIF. The report is due no later than fifteen (15) calendar Days after the end of the month being reported. Issue resolution timeframe: within 1 week of the original submission.

15.4.0 Weekly Reports

15.4.1 ***Established Claim Billing File:*** The Contractor must transmit a computerized file via secure transfer, as specified by the FUND, containing only those pharmacy bills that are in accordance with the defined FUND business rules for pharmacy bill submission and contains only those pharmacy bills that have been successfully matched to an established FUND claim. The report is due on the Monday following the week reported. Issue resolution timeframe: prior to the next scheduled submission;

15.4.2 ***Weekly Invoice:*** The Contractor must submit a weekly Vendor Invoice as follows:

15.4.2a Hard copy of the Vendor Invoice submitted to the FUND via USPS.

15.4.2b Electronic submission of the Vendor Invoice Details file supporting the charges on the Vendor Invoice.

15.4.2b(1) The Contractor must submit the Vendor Invoice Detail file in the form an ASCII text file. The purpose of the detailed invoice file is to provide the FUND with the information needed in order to programmatically reconcile the Vendor Invoice. The report is due on the Monday following the week reported. Issue resolution timeframe: within 1 week of the original submission;

15.4.3 ***Aging Bill Report File:*** The Contractor is required to submit a computerized pharmacy billing file via secure transfer with bills previously submitted in the Instant Enrollment/ "Short Fill" file that remain unmatched to an established NYSIF claim. In the event there are not records meeting the above criteria, an empty file should be transmitted. The report is due each Monday? Issue resolution timeframe: prior to the next scheduled submission.

15.5.0 Daily Reports

15.5.1 ***Short File Report File:*** The Contractor is required to submit a computerized file via secure transfer with pharmacy bills for those injured workers of NYSIF policy holders where the bill cannot be matched to an established NYSIF claim. The report is due within twenty four (24) hours following the Day reported. Issue resolution timeframe: prior to the next scheduled submission.

ARTICLE XVI: TRANSITION AND TERMINATION OF CONTRACT

16.1.0 The Contractor must commit to fully cooperate with the successor contractor to ensure the timely, smooth transfer of information necessary to administer the NYSIF Program.

16.1.1 The Contractor must, within one hundred twenty (120) Days of the end of the Agreement, or within forty-five (45) Days of notification of termination, if the Agreement is terminated prior to the end of its term, provide the FUND with a detailed written plan for transition, which outlines, at a minimum, the tasks, milestones and deliverables associated with:

16.1.1a Transition of NYSIF Program data, including but not limited to a minimum of one year of historical Claimant data, detailed COB data, report formats, Mail Service Pharmacy, Specialty Pharmacy and retail scripts with available refills, prior authorization approved through dates, generic exceptions that have been entered into the adjudication system on behalf of the Claimant, as well as other data the successor organization may request and the FUND approves during implementation of the NYSIF Program in the format acceptable to the FUND. The transition of open refill prior authorization files should include but not be limited to the following:

16.1.1a(1) Providing a test file to the successor organization in advance of the implementation date to allow the new Contractor to address any potential formatting issues;

16.1.1a(2) Providing one or more pre-production files at least four (4) weeks prior to implementation that contains Claimant Prescription refill availability, one year of claims history and prior authorization and appeal approved through dates as specified by the FUND working in conjunction with the successor organization;

16.1.1a(3) Providing a second production file to the new contractor by the close of business January 2nd (or 2 days after this Agreement terminates) that contains all Claimant Prescription refill availability as specified by the FUND, working in conjunction with the selected successor contractor; and

16.1.1a(4) Providing a lag file seven (7) Days after the implementation date to capture any refills that may have been in process but not yet shipped at the Contractor's Mail Service and Designated Specialty Pharmacy(ies) after the end of the year.

16.1.2 Transition of Claimant information on all non-transferable compounds and controlled medications.

16.1.3 Within fifteen (15) Business Days from receipt of the Transition Plan, the FUND shall either approve the Transition Plan or notify the Contractor, in writing, of the changes required to the Transition Plan so as to make it acceptable to the FUND.

16.1.4 Within fifteen (15) Business Days from the Contractor's receipt of the required changes, the Contractor shall incorporate said changes into the Transition Plan and submit such revised Transition Plan to the FUND.

16.1.5 The Contractor shall be responsible for transitioning the NYSIF Program in accordance with the approved Transition Plan.

16.1.6 To ensure that the transition to a successor organization provides Claimant's with uninterrupted access to their Prescription drug benefits and associated customer services, and to enable the FUND to effectively manage the Agreement, the Contractor is required to provide the following Contractor related obligations and deliverables to the NYSIF Program through the final financial settlement of the Agreement:

16.1.6a Provide all Contractor provided services associated with claims incurred on or before the scheduled termination date of the Agreement, including but not limited to paying network claims, Mail Service Pharmacy claims, Specialty

Pharmacy claims, manual submit claims including but not limited to: Medicaid, VA , Skilled Nursing Facility claims, out of network claims, foreign claims, in-network claims, COB claims, Student Health Center Claims, and Medicare, reimbursing late filed claims if warranted, reimbursing customer credit balance accounts, resolution of Mail Service Pharmacy process and Specialty Pharmacy Process issues, continuing to provide updates on pending litigation and settlements and claims/rebate data for class action litigation that the Contractor or the AG has/may file on behalf of the NYSIF Program. In addition, the Contractor must continue to provide the FUND access to any online claims processing data and history and online reporting systems through the final settlement dates, unless the FUND notifies the Contractor that access may be ended at an earlier date;

16.1.6b Complete all required reports in Article XV "Reports and Claim Files";

16.1.6c Provide the NYSIF Program with sufficient staffing in order to address State audit requests and reports in a timely manner;

16.1.6d Agree to fully cooperate with all the FUND or OSC audits consistent with the requirements of Appendices A and B;

16.1.6e Perform timely reviews and responses to audit findings submitted by the FUND and the Comptroller's audit unit in accordance with the requirements set forth in Article XVII "Audit Authority";

16.1.6f Remit reimbursement due the NYSIF Program within fifteen (15) Days upon final audit determination consistent with the process specified in Article XVII "Audit Authority," Article XIV "Payments/(credits) to/(from) the Contactor" and Appendix B; and

16.1.7 The Contractor is required to receive and apply enrollment updates, keeping dedicated phone lines open with adequate available staffing to provide customer service at the same levels provided prior to termination of this contract, adjusting phone scripts, and transferring calls to a new vendor's lines.

16.1.8 The Contractor is required to transmit point of service messaging to their Retail Pharmacy Network upon the termination date of the Agreement instructing Pharmacists to submit NYSIF Program Claimant claims to the appropriate RXBIN, RXPCN, RXGRP or other claim identification information as specified by the FUND working in conjunction with the Contractor.

16.1.9 If the Contractor does not meet all of the Transition Plan requirements found in this Article, the Contractor **will permanently forfeit 100%** of all Claims Administrative Fees (prorated on a daily basis) from the due date of the Transition Plan requirements to the date the Transition Plan requirements are completed to the satisfaction of the FUND.

ARTICLE XVII: AUDIT AUTHORITY

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

17.1.0 The Contractor acknowledges that the FUND has the authority to conduct financial and performance audits of the Contractor's delivery of NYSIF Program services in accordance with the Agreement and any applicable State and federal statutory and regulatory authorities;

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

17.2.1 Review of the Contractor's activities and records relating to the documentation of its performance under this Agreement in areas such as determination of Claimant eligibility and application of various FUND program administrative features,

17.2.2 Comparison of the information in the Contractor's enrollment file to that on the enrollment reports issued to the Contractor by the FUND.

17.2.3 Assessment of the Contractor's information, utilization and demographic systems to the extent necessary to verify accuracy of data on the reports provided to the FUND in accordance with Article XV "Reports and Claim Files," of this Agreement.

17.3.0 The Contractor shall maintain and make available documentary evidence necessary to perform such reviews. Documentation maintained and made available by the Contractor may include, but

is not limited to, source documents, books of account, subsidiary records and supporting work papers, claim documentation, pertinent contracts, Key Subcontracts, provider agreements, and correspondence;

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

17.5.0 The Contractor shall, at the FUND's request, and in a time period specified by the FUND, search its files, retrieve information and records, and provide to the auditors such documentary evidence as they require. The Contractor shall make sufficient resources available for the efficient performance of audit procedures;

17.6.0 The Contractor shall comment on the contents of any audit report prepared by the FUND and transmit such comments in writing to the FUND within 30 days of receiving any audit report. The response will specifically address each audit recommendation. If the Contractor agrees with the recommendation, the response will include a work plan and timetable to implement the recommendation. If the Contractor disagrees with an audit recommendation, the response will give all details and reasons for such disagreement. Resolution of any disagreement as to the resolution of an audit recommendation shall be subject to the dispute resolution procedures set forth in Appendix B of this Agreement.

17.7.0 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 FUND within ten (10) Days after receipt of such audit report by the Contractor.

17.8.0 The audit provisions contained herein shall in no way be construed to limit the audit authority or audit scope of the OSC as set forth in either Appendix A of this Agreement, Standard Clauses for All New York State Contracts, or Appendix B, Standard Clauses for All FUND Contracts.

ARTICLE XVIII: CONFIDENTIALITY

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

18.1.0 All claims and enrollment records relating to the Agreement are confidential and shall be used by the Contractor solely for the purpose of carrying out its obligations under the Agreement, for measuring the performance of the Contractor in accordance with the performance guarantees set forth in Article VII of this Agreement, and for providing the FUND with material and information as may be specified elsewhere in this Agreement;

18.2.0 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 Claimant, no records may be otherwise used or released to any party other than the FUND by the Contractor, its officers, Employees, agents, consultants or Key Subcontractors 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 FUND, be grounds for termination of the Agreement;

18.3.0 The Contractor, its officers, Employees, agents, consultants and/or any Key Subcontractors agree to comply, during the performance of the Agreement, with all applicable Federal and State privacy, security and confidentiality statutes, including but not limited to the Personal Privacy Protection Law (New York Public Officer's Law Article 6-A, as amended), and its implementing regulations, policies and requirements, for all material and information obtained by the Contractor through its performance under the Agreement, with particular emphasis on such information relating to Claimants;

18.4.0 The Contractor shall be responsible for assuring that any Agreement between the Contractor and any of its officers, Employees, agents, consultants and/or Key Subcontractors contains a provision that strictly conforms to the various confidentiality provisions of this Agreement; and

18.5.0 The Contractor shall promptly advise the FUND of all requests made to the Contractor for information regarding the performance of services under this Agreement, including, but not limited to, requests for any material and information provided by the FUND except as required by Key Subcontractors or agents solely for the purpose of fulfilling the Contractor's obligations under this Agreement or as required by law.

ARTICLE XIX: USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION

19.1.0 For purposes of this Article, the term "Protected Health Information" ("PHI") means any information, including demographic information collected from an individual, that relates to the past, present, or future physical or mental health or condition of an individual, to the provision of health care to an individual, or to the past, present, or future payment for the provision of health care to an individual, that identifies the individual, or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual. Within the context of this Agreement, PHI may be received by the Contractor from the FUND or may be created or received by the Contractor on behalf of the FUND. All PHI received or created by the Contractor as a consequence of its performance under this Agreement is referred to herein collectively as "FUND's PHI."

19.2.0 The Contractor acknowledges that the FUND administers a Workers' Compensation Prescription Drug Program that term is defined in HIPAA's implementing regulations at 45 CFR Parts 160 and 164, and that each of those group health plans consequently is a "covered entity" under HIPAA. These group health plans include NYSHIP, which encompasses The Empire Plan as well as participating health maintenance organizations; the Dental Plan, and the Vision Plan. In this capacity, the Department is responsible for the administration of these "covered entities" under HIPAA. The Contractor further acknowledges that the Department has designated NYSHIP and The Empire Plan as an Organized Health Care Arrangement (OHCA), respectively. The Contractor further acknowledges that the Contractor is a HIPAA "business associate" of the Department as a consequence of the Contractor's provision of services to and/or on behalf of the Department within the context of the Contractor's performance under this Agreement, and that the Contractor's provision of such services may involve the disclosure to the Contractor of individually identifiable health information from the Department or from other parties on behalf of the Department, and also may involve the Contractor's disclosure to the Department of individually identifiable health information as a consequence of the services performed under this Agreement.

19.3.0 ***Permitted Uses and Disclosures of the Department's PHI*:** The Contractor may use and/or disclose the FUND's PHI solely in accordance with the terms of this Agreement. In addition, the Contractor may use the FUND's PHI to provide data aggregation services relating to the health care operations of the FUND. Further, the Contractor may use and disclose the FUND's PHI for the proper management and administration of the Contractor if such use is necessary for the

Contractor's proper management and administration or to carry out the Contractor's legal responsibilities, or if such disclosure is required by law or the Contractor obtains reasonable assurances from the person to whom the information is disclosed that it shall be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Contractor of any instances of which it is aware in which the confidentiality of the information has been breached.

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

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

19.6.0 ***Breach Notification:***

19.6.1 ***Reporting:*** The Contractor shall report to the FUND any breach of unsecured PHI, including any use or disclosure of the FUND's PHI otherwise than as provided for by this Agreement, of which the Contractor becomes aware. Further, the Contractor shall report to the FUND any security incident of which it becomes aware. "Security incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information, or interference with system operations in an information system. The Contractor shall notify the FUND within five (5) business days of the date the Contractor becomes aware of the event.

19.6.2 ***Required Information:*** The Contractor shall provide the following information to the FUND within ten (10) business days of discovery except when, despite all reasonable efforts by the Contractor to obtain the information required, circumstances beyond the control of

the Contractor necessitate additional time. Under such circumstances, the Contractor shall provide to the FUND with the following information as soon as possible and without unreasonable delay, but in no event later than thirty (30) Days from the date of discovery:

19.6.2a the date of the breach incident;

19.6.2b the date of the discovery of the breach;

19.6.2c a brief description of what happened;

19.6.2d a description of the types of unsecured PHI that were involved;

19.6.2e identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the breach;

19.6.2f a brief description of what the Contractor is doing to investigate the breach, to mitigate harm to individuals and to protect against any further breaches; and

19.6.2g any other details necessary to complete an assessment of the risk of harm to the individual.

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

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

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

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

19.7.0 ***Associate's Agents:*** The Contractor shall require all of its agents or Key Subcontractors to whom it provides the FUND's PHI, whether received from the FUND or created or received by the

Contractor on behalf of the FUND, agree to the same restrictions and conditions on the access, use, and disclosure of PHI that apply to the Contractor with respect to the FUND's PHI under this Agreement.

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

19.9.0 ***Amendment of the Department's PHI:*** The Contractor shall make the FUND's PHI available to the FUND as the FUND may require to fulfill the FUNDS's obligations to amend individuals' PHI pursuant to HIPAA and its implementing regulations. The Contractor shall, as directed by the FUND, incorporate any amendments to the FUNDS's PHI into copies of the FUND's PHI as maintained by the Contractor.

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

19.11.0 ***Termination:***

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

19.11.2 ***Disposition of the Department's PHI:*** At the time this Agreement is terminated, the Contractor shall, if feasible, return or destroy all of the FUND's PHI, whether received from the FUND or created or received by the Contractor on behalf of the FUND, 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 FUND's PHI infeasible.

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

19.13.0 ***Miscellaneous:***

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

19.13.2 ***Survival*****:** The respective rights and obligations of Business Associate and Covered Entity under HIPAA as set forth in this Business Associate Agreement shall survive termination of this Agreement.

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

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

ARTICLE XX: NOTICES

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

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

20.1.2 by facsimile transmission;

20.1.3 by personal delivery;

20.1.4 by expedited delivery service; or

20.1.5 by e-mail.

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

State of New York [Agency Name]

Name:
Title:
Address:
Telephone Number:
Facsimile Number:
E-Mail Address:

[Contractor Name]

Name:
Title:
Address:
Telephone Number:
Facsimile Number:
E-Mail Address:

20.2.0 Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

20.3.0 The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices

under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

Contractor: _____

Contract Number: _____

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

NEW YORK STATE INSURANCE FUND

Date: _____ By: _____

Name: XXXXXXXXXXXX

Title: _____

SELECTED 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.

My commission expires: _____ _____

NOTARY PUBLIC

Approved as to Form:

ERIC SCHNEIDERMAN
ATTORNEY GENERAL

By: _____

Date: _____

Approved:

THOMAS P. DINAPOLI
COMPTROLLER

By: _____

Date: _____