
SECTION VII: AGREEMENT PROVISIONS**AGREEMENT NO. C000XXX**

THIS Agreement is entered into by and between New York State Department of Civil Service ("Department" or DCS), having its principal office at Empire State Plaza, Agency Building #1, Albany, NY 12239 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, Civil Service Law Article XI authorizes and directs the President of the State Civil Service Commission and New York State Department of Civil Service (President) to establish a health benefit plan for the benefit of State Employees, Retirees, and their Dependents, and for the benefit of Participating Employers', Retirees, and their Dependents; and

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

WHEREAS, on May 7, 2015 the Department of Civil Service issued an Invitation for Bid entitled, "Dependent Eligibility Audit Services" to secure the services of a qualified organization to provide Dependent Eligibility Audit Services (DEAS) as set forth in the IFB; and

WHEREAS, after thorough review and evaluation by the Department of Proposals received in response to the IFB, the Contractor's Proposal was selected as representing the Lowest Total Projected Cost to the State by a responsive and responsible bidder; and

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

THEREFORE, the Parties agree as follows:

ARTICLE I: DEFINITION OF TERMS

- 1.1.0** **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** **AG** means the New York State Attorney General's Office.
- 1.3.0** **Agreement or Contract** means the Agreement entered into between the Parties resultant from this IFB.
- 1.4.0** **Amnesty Period** means a specified period, not to exceed sixty Days, when any Enrollee with a Family Policy who participates in NYSHIP voluntarily identifies any ineligible Dependent.
- 1.5.0** **Appeal** means a request that is submitted by the Enrollee with required supporting documentation providing evidence of Dependent eligibility.
- 1.6.0** **Appeal Reinstatement Period(s)** means the 90-Day period following each Phase of the Eligibility Verification Period during which the Contractor reviews Appeals for Reinstatement of coverage for Dependents terminated as a result of the DEA Project Services and makes a determination as to whether the Reinstatement is appropriate. Each Appeal and Reinstatement Period will commence seven (7) Days after the Contractor submits an accurate termination file to DCS for each Phase in the Eligibility Verification Period. The Contractor must send Reinstatement files to DCS during the Appeal and Reinstatement Period on a weekly basis identifying Dependents whose eligibility should be reinstated as a result of the Appeal determination.
- 1.7.0** **Business Day(s)** means Monday through Friday, except for days designated as Business Holidays.
- 1.8.0** **Business Holiday(s)** means legal Holidays observed by the State.
- 1.9.0** **Call Center Hours** means between the hours of 8:00 a.m. until 8:00 p.m. ET, Monday through Friday.

- 1.10.0** **Commissioner** means the Commissioner of the New York State Department of Civil Service.
- 1.11.0** **Contract Effective Date** means that the Agreement is approved by the New York State Office of the State Comptroller resultant from this IFB.
- 1.12.0** **Contractor** means the successful Offeror selected as a result of the evaluation of Offeror's Proposals submitted in response to this IFB and who executes a Contract with the Department to provide Project Services.
- 1.13.0** **CSL** means New York State Civil Service Law.
- 1.14.0** **Day(s)** means calendar days unless otherwise noted.
- 1.15.0** **DEA Project or Project Services** means the entire scope of services to be provided by the Contractor pursuant to the terms and conditions of the Agreement that results from this IFB.
- 1.16.0** **Department or DCS** means the New York State Department of Civil Service.
- 1.17.0** **Dependent** means the Spouse, Domestic Partner, and children under twenty-six (26) years of age of an Enrollee. Dependent children age twenty-six (26) or over are also eligible if they are full-time students with military service or they are incapable of supporting themselves due to mental or physical disability acquired before termination of their eligibility for coverage under the New York State Health Insurance Program.
- 1.18.0** **Dependent Survivor** means a Spouse who has not remarried, a Dependent child(ren) who meets eligibility requirements, or a Domestic Partner who has not married or acquired a new Domestic Partner, of an Enrollee who died after having at least ten (10) years of service, who was covered as a Dependent of the deceased Enrollee at the time of the Enrollee's death and who elects to continue coverage under NYSHIP following the three (3) month extended benefits period.
- 1.19.0** **DOB** means the New York State Division of the Budget.
- 1.20.0** **Domestic Partner** means a Dependent who is eighteen years of age or older, and both the Enrollee and Dependent have been in a partnership for at least six (6)

months, are both unmarried (proof of divorce decrees required, if applicable), are not related in a way that would bar marriage, have shared the same residence and have been financially interdependent for at least six months, and have an exclusive mutual commitment (which is expected to last indefinitely) to share responsibility for each other's welfare and financial obligations. When applicable, new Domestic Partners will be subject to a one (1) year waiting period from the termination of the Enrollee's last Domestic Partner coverage.

- 1.21.0 Eligibility Verification Period** means the period following the Amnesty Period in which the Contractor conducts Dependent eligibility verification of the NYSHIP population subject to the audit and may consist of up to three (3) Phases at the discretion of the Contractor.
- 1.22.0 Empire Plan** means the self-insured health plan administered by the NYS Department of Civil Service to provide health benefits for the Employees, Retirees, and eligible Dependents of New York State and NYSHIP Participating Agencies and Participating Employers.
- 1.23.0 Employee** means Employee, Retiree, Vestee, or Dependent Survivor of a Deceased Employee or Retiree defined as an Employee in the regulations of the President of the Civil Service Commission, as amended from time to time.
- 1.24.0 Employee Benefits Division (EBD)** means the division of the New York State Department of Civil Service responsible for administering the New York State Health Insurance Program (NYSHIP).
- 1.25.0 Employee ID (EMPLID)** means the unique identifying code of an Enrollee (i.e., Enrollee's account number).
- 1.26.0 Enrollee** means an Employee, Retiree, former Employee, or Dependent who elects to participate in one or some of the benefit programs administered by the Department of Civil Service.
- 1.27.0 ET** means prevailing Eastern Time.
- 1.28.0 Family Policy or Family Policies** means a policy(ies) that includes coverage for an Enrollee plus covered Dependents.

- 1.29.0** **GOER** means the New York State Governor's Office of Employee Relations.
- 1.30.0** **Health Benefits Administrator (HBA)** means an agency representative, primarily located in an agency human resource office, who provides information on health insurance benefits to agency staff.
- 1.31.0** **HMO** means one of the health maintenance organizations which participate in the New York State Health Insurance Program.
- 1.32.0** **IFB or Procurement** means the Invitation for Bid entitled "Dependent Eligibility Audit Services," dated May 7, 2015.
- 1.33.0** **Implementation Date** means the first Day following the 60-Day Implementation Period.
- 1.34.0** **Implementation Period** means the 60-Day Period; after the date the Department notifies the Contractor the Agreement has been approved by OSC, in which the Contractor implements all Project Services, as outlined in the Agreement.
- 1.35.0** **Key Subcontractor(s)** means those vendors with whom the Contractor subcontracts to provide Project Services and incorporated as a part of the Contractor's project team. Key Subcontractors include all vendors who will provide \$100,000 or more in Project Services over the term of the Agreement, as well as any vendor who will provide Project Services in an amount lower than the \$100,000 threshold, and who is a part of the Contractor's project team.
- 1.36.0** **MWBE** means Minority- and Women-Owned Business Enterprises.
- 1.37.0** **New York State Health Insurance Program (NYSHIP)** means the health insurance program established by NYS to provide health insurance protection to Employees, Retirees and eligible Dependents of New York State and Participating Agencies and Participating Employers. The program is administered by the NYS Department of Civil Service. NYSHIP provides health insurance coverage through The Empire Plan, Health Maintenance Organizations (HMOs); and the Student Employee Health Plan (SEHP).

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- 1.38.0** **NYBEAS** means the New York Benefits Eligibility & Accounting System, a computerized enrollment system utilized by the Department for the administration of Employee benefits.
- 1.39.0** **NYS or State** means the State of New York (including the New York State Department of Civil Service).
- 1.40.0** **Offeror** means any responsible and eligible entity submitting a responsive Proposal to this IFB. It shall be understood that references in the IFB to “Offeror” shall include said entity’s proposed Key Subcontractor or Affiliates, if any.
- 1.41.0** **Opt-Out** means a program that offers incentive payments to an eligible NYS Employee who has elected to Opt-Out of NYSHIP health benefits because the Employee is covered by other employer-sponsored group health insurance through other employment of their own or as a Dependent under a plan belonging to their Spouse, Domestic Partner or parent through his/her employment.
- 1.42.0** **OSC** means the New York State Office of the State Comptroller.
- 1.43.0** **Participating Agency (PA)** means any unit of local government such as school districts, special districts, or district or municipal corporations that elects with the approval of the President of the Civil Service Commission, to participate in the New York State Health Insurance Program. Examples of PAs are: Clinton County; East Meadow Public Library; and the Central Islip Union Free School District.
- 1.44.0** **Participating Employer (PE)** means any public authority, public benefit corporation, or other agency subdivision or quasi-public organization of the State that elects, with the approval of the President of the Civil Service Commission, to participate in the New York State Health Insurance Program. Examples of PEs are: the NYS Thruway Authority and the Dormitory Authority.
- 1.45.0** **Phase** means a portion of the Eligibility Verification Period during which a subset of the entire NYSHIP population is subject to Dependent verification, as mutually agreed upon by the Department and the Contractor.
- 1.46.0** **President** means the President of the Civil Service Commission and the Commissioner of the Department.

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- 1.47.0 Project Fees** means any and all Contractor costs associated with the DEA Project Services including but not limited to Project Implementation, administration of Amnesty Period, Eligibility Verification Period, and Appeal and Reinstatement Period, electronic transfer of data, call center services, online web portal services, and cost of communications (including postage) to Enrollees.
- 1.48.0 Proposal or Submissions** means the Offeror's Proposal, submitted in response to the IFB including all responses to supplemental requests for clarification, information, and documentation.
- 1.49.0 Regulations of the President of the Civil Service Commission** means those regulations promulgated by the President of the Civil Service Commission under the authority of Civil Service Law, Article XI, as amended, and including but not limited to those regulations found at 4 New York Code of Rules and Regulations (NYCRR) Part 73, as amended.
- 1.50.0 Reinstatement** means a determination to re-enroll a Dependent that has been terminated from coverage as a result of the DEA Project Services. The determination will be based on a review of appropriate documentation provided by the Enrollee and/or Dependent.
- 1.51.0 Retiree** means any person defined as a Retiree pursuant to the terms of 4 NYCRR Part 73, as amended.
- 1.52.0 Return On Investment (ROI)** means the performance measure used to evaluate the cost effectiveness of the DEAS, utilizing the methodology as set forth in Section 6.11.0 of this Agreement.
- 1.53.0 Spouse** means a Spouse, including a legally separated Spouse. If an Enrollee is divorced or the marriage has been annulled, the former spouse is not eligible, even if a court orders the Enrollee to maintain coverage.
- 1.54.0 State** means the State of New York.
- 1.55.0 Student Employee Health Plan (SEHP)** means a health benefits plan for graduate student Employees of the New York State University and the New York City University systems that provide benefits through the various Empire Plan Insurance Contracts.

- 1.56.0** **Vestee** means a former Employee who is entitled to continue benefits under NYSHIP because he/she has met all the requirements for NYSHIP coverage as a Retiree, except for eligibility to collect a pension, at the time employment terminates.

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 Contract (Agreement) will be for a term of fifteen (15) months, including a 60-Day Implementation Period, an Amnesty Period (not to exceed 60-Days), an Eligibility Verification Period comprised of up to three (3) Phases, and 90-Day Appeal and Reinstatement Period(s) for each Phase of the Eligibility Verification. All eligibility verification must be completed within one (1) year of the Agreement start date and all Project Services must be completed within fifteen (15) months of the Agreement start date. It is the Department's intent that the Implementation Period shall begin following OSC approval of the Agreement, with all other contractual responsibilities to begin on the first Day following the 60-Day Implementation Period after the Department notifies the Contractor of OSC's approval of the Agreement and subject to the termination provisions contained herein.
- 2.2.0** This Agreement is subject to amendment(s) only upon consent of the Parties, reduced to writing and approved by the AG and OSC.

Article III: INTEGRATION

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

ARTICLE IV: DOCUMENT INCORPORATION AND ORDER OF PRECEDENCE

- 4.1.0** This Agreement consists of:

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- 4.1.1** The body of the Agreement (that portion preceding the signatures of the Parties in execution and amendments thereto;
- 4.1.2** Appendix A - Standard Clauses for All New York State Contracts;
- 4.1.3** Appendix B - Standard Clauses for All Department Contracts;
- 4.1.4** Appendix C - Third Party Connection and Data Sharing Agreement;
- 4.1.5** Appendix D - Participation by Minority Group Members and Women with Respect to State Contracts: Requirements and Procedures; Appendix D-1: Minority and Women-Owned Business Enterprises – Equal Employment Opportunity Policy Statement; and Appendix D-2: MWBE Utilization Reporting Responsibilities under Article 15-A; and
- 4.1.6** The following Exhibits attached and incorporated by reference to the body of the Agreement:
- 4.1.6a** Exhibit A - The MacBride Act Statement and the Non-Collusive Bidding Certification:
- 4.1.6b** Exhibit B - Invitation for Bid entitled “Dependent Eligibility Audit Services” dated May 7, 2015; and Exhibit B-1 – Official Department Response to Questions Raised Concerning the IFB, dated May 27, 2015.
- 4.1.6c** Exhibit C – Contractor’s Proposal; and Exhibit C-1 Written Responses to clarifying questions regarding Contractor’s Proposal; and
- 4.1.6d** Exhibit D – DEA Project Services Fees Schedule;
- 4.1.7** In the event of any inconsistency in, or conflict among, the document elements of the Agreement identified above, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the following order:
- 4.1.7a** First, Appendix A - Standard Clauses for All New York State Contracts;

- 4.1.7b** Second, Appendix B – Standard Clauses for All Department of Civil Service Contracts;
- 4.1.7c** Third, Appendix C – Third Party Connection and Data Sharing Agreement;
- 4.1.7d** Fourth, Appendix D – Participation by Minority Group Members and Women With Respect to State Contracts: Requirements and Procedures; Appendix D-1 -Minority and Women-Owned Business Enterprises – Equal Employment Opportunity Policy Statement; and Appendix D-2: MWBE Utilization Reporting Responsibilities under Article 15-A;
- 4.1.7e** Fifth, any Amendments to the body of the Agreement;
- 4.1.7f** Sixth, the body of the Agreement;
- 4.1.6g** Seventh, Exhibit B, the Invitation for Bids entitled “Dependent Eligibility Audit Services” dated May 7, 2015; and Exhibit B-1, the official Department response to questions raised concerning the IFB, dated May 27, 2015;
- 4.1.7h** Eighth, Exhibit C, Contractor’s Proposal; and Exhibit C-1, Written Responses to clarifying questions regarding Contractor’s Proposal; and
- 4.1.7i** Ninth, Exhibit D, DEA Project Services Fee Schedule.

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

ARTICLE V: LEGAL AUTHORITY TO PERFORM

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

- 5.2.0** Contractor agrees that it shall perform its obligations under this Agreement in accordance with all applicable federal and NYS laws, rules and regulations, policies and/or guidelines now or hereafter in effect, including but not limited to the requirements set forth in Article XI Section 164 of NYS Civil Service Law as amended.
- 5.3.0** The Contractor shall provide the Department with immediate notice in writing of the initiation of any legal action or suit which relates in any way to this Agreement, or which may affect performance of the Contractor's duties under the Agreement.

ARTICLE VI: PROJECT SERVICES

- 6.1.0** During the term of this Agreement, the Contractor will be responsible for the performance of those services/tasks as described herein this Article VI, "Project Services," of this Agreement and any and all other Project Services as referenced in this Agreement.
- 6.2.0** **Project Management Team:** Throughout the term of the Agreement the Contractor must:
- 6.2.1** Maintain an organization of sufficient size with staff that possesses the necessary skills and experience to administer, manage, and oversee all aspects of the DEA Project during implementation and operation;
- 6.2.2** Dedicate a project manager who will be available full time for the entire term of the DEA Project and who has at least three (3) years' experience serving as a project manager. The Contractor must advise the Department immediately if replacement of the project manager is contemplated during the term of this DEA Project;
- 6.2.3** Assign a project management team that is experienced, accessible, and sufficiently staffed to provide timely (one (1) Business Day) responses to administrative concerns and inquiries posed by the Department, and other users designated by the Department, for the duration of the Agreement to the satisfaction of the Department; and
- 6.2.4** Immediately notify the Department of actual or anticipated events affecting delivery of services to the Department and present options available to

minimize or eliminate the impact of those events on the delivery of Project Services.

6.3.0 Project Implementation: During the 60-Day Implementation Period of the Project the Contractor must:

6.3.1 Develop, and update, as needed, a written implementation plan for the DEA Project. The implementation plan must be detailed and comprehensive and demonstrate a firm commitment by the Contractor to complete all implementation activities within the 60-Day Implementation Period. For all tasks that require Department review and approval, a minimum review period of five (5) Business Days must be built into the implementation plan; and

6.3.2 Undertake and complete all implementation activities, including but not limited to those specific activities set forth below in this Section 6.3.2a – 6.3.2d of this Agreement. Such implementation activities must be completed no later than the first Day following the 60-Day Implementation Period and includes;

6.3.2a Planning and testing the transmission of data to/from the Department as outlined in Section 6.4.0 of this Agreement;

6.3.2b Establishing and maintaining a fully trained call center as outlined in Section 6.5.0 of this Agreement;

6.3.2c Establishing a secure online web portal providing access for Enrollees and clients as outlined in Section 6.6.0 of this Agreement; and

6.3.2d Developing Enrollee communications for review and approval by the Department as outlined in Section 6.8.0 of this Agreement.

6.4.0 Electronic Transfer of Data: Throughout the term of the Agreement the Contractor must:

6.4.1 Receive and transmit Dependent data in a secure electronic format and on a schedule mutually agreed upon by the Contractor and the Department;

- 6.4.2 Receive/transmit data in the format required by the file layouts presented in Exhibit III.E of this Agreement;
 - 6.4.3 Ensure all electronic transfer of data and/or storage of files is located solely in the United States;
 - 6.4.4 Maintain a HIPAA Compliant level of security to protect the confidentiality of Enrollee/Dependent information;
 - 6.4.5 Have a disaster recovery plan in place that is applicable to this DEA Project;
 - 6.4.6 Image all documentation received from the Enrollee and transmit a file (or files) to the Department in a standard format (i.e. Multi-Page Tagged Image File Format (TIFF)). The file of images must be accompanied by indexing files and follow a naming convention as outlined in Exhibit III.G of this Agreement; and
 - 6.4.7 Acknowledge that it is the Department's policy that all files need to have a PGP encryption key. If the Department sends the Contractor a file(s), the Department will send to the Contractor's server with the Contractor's PGP encryption key. If the Contractor sends a file(s) the Contractor will send to the Department's server with the Department's PGP encryption key. The files will be exchanged using SFTP protocol.
- 6.5.0 Call Center Services:** Throughout the term of the Agreement the Contractor must:
- 6.5.1 Establish a dedicated toll free telephone number that Enrollees can call with questions during the Amnesty Period, the Eligibility Verification Period, and the Appeal and Reinstatement Period(s). The Contractor must maintain a call center with a staffing level sufficient to meet the call center performance guarantees. The Contractor must dedicate a core staff to service the Department's account;
 - 6.5.2 Establish a call center, located in the United States and staffed with fully trained center representatives and supervisors, with representatives available, at a minimum, from 8:00 a.m. to 8:00 p.m. ET, except for Business Holidays observed by the State. The Contractor's call center technology must

have a system to track all inquiries. The system must include call type, actions, and resolutions. Call center representatives must be trained to respond to questions, and inquiries including, but not limited to, Dependent eligibility and status of documentation review. Any inquiries that cannot be answered in the initial phone call must be responded to either by telephone or in writing within five (5) Business Days;

6.5.3 Escalate complex and/or difficult calls to more experienced representatives and ultimately supervisory staff; and

6.5.4 Staff the call center during the Appeal and Reinstatement Period(s) to assist Enrollees who submit documentation that supports reinstating the terminated Dependent's coverage.

6.6.0 Secure Online Web Portal: Throughout the term of the Agreement, the Contractor must:

6.6.1 Establish a secure online web portal which allows Enrollees to submit, and confirm submission of, eligibility documentation. The secure online web portal must be available twenty-four hours a day, seven (7) days a week, except for regularly scheduled maintenance. The Department shall be notified of all regularly scheduled maintenance at least one (1) Business Day prior to such maintenance being performed; and

6.6.2 Maintain a secure online web portal that allows Enrollees, or the Department as applicable, to perform the following;

6.6.2a Upload documentation;

6.6.2b Check Dependent eligibility status in real-time;

6.6.2c View all communications sent from the Contractor to the Enrollee;

6.6.2d Review FAQ's that have been developed by the Contractor and approved by the Department;

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- 6.6.2e** Allows Enrollees to get answers to questions via secure email and/or a chat function;
 - 6.6.2f** Access customer service contact information including address(es), phone number(s) and email address(es);
 - 6.6.2g** Allows the Department to compile periodic management reports documenting the progress and outcomes of the Project via the secure online web portal; and
 - 6.6.2h** **Allows the Department to have view-only access to Dependent eligibility status.**
 - 6.6.3** Allows cobranding of the secure online portal by incorporating the NYSHIP logo.
- 6.7.0** **Amnesty Period, Eligibility Verification Period, and Appeal and Reinstatement Period(s):** Throughout the term of the Agreement, the Contractor must:
- 6.7.1** Administer one (1) Amnesty Period for all Enrollees with a Family Policy to report ineligible Dependents. Administration of the Amnesty Period must include the communication of the Amnesty Period to Enrollees, call center support, receiving requests from Enrollees to terminate ineligible Dependents, and the reporting of ineligible Dependents to the Department;
 - 6.7.2** Administer up to three (3) Phases of eligibility verification during the Eligibility Verification Period. Administration of the Eligibility Verification Period shall include, but not be limited to, sending communication materials to Enrollees regarding the Eligibility Verification Periods, providing call center support, receiving and processing documents to verify eligibility, and the reporting of ineligible Dependents to the Department. The Dependent eligibility audit tasks must conform to NYSHIP eligibility rules;
 - 6.7.3** Administer an Appeal and Reinstatement Period(s) for Dependents who were terminated because sufficient documentation was not provided on a timely basis and who subsequently are able to provide the documentation. The Department requires the Contractor to complete Reinstatements quickly and

accurately and provide the Reinstatement File as outlined in Section 6.10.1f of this Agreement;

6.7.4 Transmit termination and Reinstatement files on a schedule as outlined in Sections 6.10.1e and 6.10.1f of this Agreement; and

6.7.5 Complete all tasks related to the Amnesty Period, and Eligibility Verification Period, within one (1) year of the Agreement start date and the Appeal and Reinstatement Period(s) within fifteen (15) months of the Agreement start date.

6.8.0 **Communication Material:** Throughout the term of the Agreement, the Contractor must:

6.8.1 Develop customized Enrollee communications, subject to written approval by the Department for the Amnesty Period, the Eligibility Verification Period and the Appeal and Reinstatement Period(s). The communications must provide sufficient detail so the Enrollee can clearly identify;

6.8.1a Dependent children verified in the prior audit for whom eligibility does not need to be confirmed;

6.8.1b Dependent children added to coverage on or after February 1, 2009 for whom documentation must be submitted to verify coverage;

6.8.1c Spouse or Domestic Partner, regardless of the date the individual was added to coverage, for whom documentation must be submitted;

6.8.1d Dates by which documentation must be submitted; and

6.8.1e Termination date for Dependents deemed ineligible for coverage. The final letter must allow the Enrollee fourteen (14) Business Days for response prior to terminating the Dependent.

- 6.8.2** Send different Enrollee communications for different types of Dependents (i.e. Dependent child versus Spouse) and NYSHIP populations (NY versus Participating Agency (PA) or Participating Employer (PE));
 - 6.8.3** Mail sufficient Department approved Enrollee communication material to achieve the ROI guarantee as outlined in Section 6.11.0 of this Agreement;
 - 6.8.4** Use a dedicated P.O. Box or other address as approved by the Department as the return address for all Enrollee communications; and
 - 6.8.5** Acknowledge that the cost of all Project Services communication mailings (including postage) will be paid by the Contractor and will be considered by the Department as being included in the total Project Cost submitted by the Offeror.
- 6.9.0** **Outgoing and Returned Mail Process:** Throughout the term of the Agreement, the Contractor must:
- 6.9.1** Conform to address labeling guidelines that will be provided by the Department that, at a minimum, will require the following:
 - 6.9.1a** The Contractor must use coding as provided in the enrollment file, Exhibit III.E, above the Enrollee address block on each mail piece. This coding will be used by the Contractor to route returned mail to agencies or DCS as appropriate for handling;
 - 6.9.1b** For all active Enrollees, as well as Retirees of PAs, the agency code and benefit program code will be used; and
 - 6.9.1c** For all other Retirees, a unique code, to be identified by the Department, will be used.
 - 6.9.2** Use USPS software as needed for simple address hygiene purposes. National Change of Address (NCOA) software may not be used as NYSHIP policy is that address changes must be requested by the Enrollee only;

- 6.9.3** Provide mailing samples during the Implementation Period for testing and Department approval before mailing to Enrollees. The Department will review and approve or deny within two (2) Business Days;
- 6.9.4** Provide a weekly file of returned mail, as outlined in Section 6.10.11 of this Agreement, to the Department; and
- 6.9.5** Accept one or more updated enrollment files, as outlined in Section 6.10.11 of this Agreement, containing corrected addresses, which the Contractor must load into their system within one (1) Business Day of receipt, should the Department determine such files are necessary.

6.10.0 Reporting: Throughout the term of the Agreement, the Contractor must:

- 6.10.1** Work with the Department to develop reports acceptable to the Department for the Amnesty Period, Eligibility Verification Period, and Appeal and Reinstatement Period(s), that include, but are not limited to, the measurement of the Contractor's response rates and outcomes, adherence to Agreement requirements, and measurement of performance guarantees. Reporting will be at intervals mutually agreed upon by the Department and the Contractor. Reporting, at a minimum, must cover:

- 6.10.1a Verification Status Summary Report** – to provide information on each letter mailed and received including number of letters mailed, number of responders, number of Amnesty Period requests, number of complete documentation received, number of incomplete documentation received, number of non-responders, number of returned mail, number of Appeals received, number of Appeals accepted, and number of Appeals rejected. The report will be required daily and may transition to weekly at the sole discretion of the Department;

- 6.10.1b Call Center Statistics** – report detailing each day's call center activity including, but not limited to, the number of calls received, telephone response rate, telephone abandonment rate, and

telephone blockage rate. The report will be required daily and may transition to weekly at the sole discretion of the Department;

- 6.10.1c Secure Online Portal Statistics** – weekly report providing information on the number of documents received daily and the percent (%) processed within three (3) Business Days and the percent (%) processed in five (5) Business Days;
- 6.10.1d Weekly Management Summary Report** – provide progress of the Project and milestones met;
- 6.10.1e Results File** – identifying Dependents to be terminated from coverage. A file will be required at the end of the Amnesty Period and at the end of each Phase of the Eligibility Verification Period. Refer to the “Results File Layout” tab in Exhibit III.E of this Agreement for the file layout;
- 6.10.1f Reinstatement File** – identifying those Dependents that were terminated during the audit and acceptable documentation is subsequently received prior to the completion of the DEA Project. The report will be required on a daily basis and must include all Reinstatements processed on the previous Business Day. Refer to “Reinstate File” tab in Exhibit III.E of this Agreement for the file layout;
- 6.10.1g Terminated and Deceased File** – a file shall be sent from the Department to the Contractor on a weekly basis after the Amnesty Period. The file will identify Enrollees and/or Dependents who have had coverage terminated or were identified as deceased after the initial population was identified for Amnesty. Refer to the “Term & Deceased File Layout” tab in Exhibit III.E of this Agreement for the file layout;
- 6.10.1h File of all Imaged Eligibility Documentation** – provide one (1) or more files of images of all eligibility documentation received, Enrollee correspondence received, and Contractor

communications to Enrollee. Report to be provided on a weekly basis. Refer to Exhibit III.G for the file layout;

6.10.1i Guarantee Report - summarizing the Contractor's compliance with all Agreement guarantees (with the exception of the ROI Guarantee, which will be calculated by the Department). This report is to be provided 30 Days after the conclusion of the DEA Project;

6.10.1j Final Project Report - summarizing DEA Project outcome and suggestions, including draft forms/documents, to improve the Department's management of Dependent eligibility. This report is to be provided 90 Days after the conclusion of the DEA Project;

6.10.1k Ad Hoc Reports – the Department may, on occasion, request ad hoc reports or other data analysis to monitor Project Services and contract compliance. The format, frequency, and due dates for such reports, if any, will be specified by the Department to the Contractor during the term of the Agreement; and

6.10.1l File of Returned Mail– provides a complete listing of mail returned to the Contractor due to incorrect addresses. The report will be required weekly at the discretion of the Department. Refer to the "Return Mail Layout" tab in Exhibit III.E of this Agreement.

6.11.0 Project Return on Investment (ROI): Throughout the term of the Agreement, the Contractor must:

6.11.1 Guarantee a return on investment of at least 3:1 (Total Savings of at least three times the Total Project Cost) for the Project including administration of the Amnesty Period, the Eligibility Verification Period and the Appeal and Reinstatement Period(s);

6.11.2 Total Savings will be calculated by the Department and will be based on the Plan (Empire, SEHP or HMO) the member is enrolled in at the time of the

audit. The Total Savings shall be calculated as follows (refer to Exhibit III.F of this Agreement for an example of the ROI Calculation):

6.11.2a For the Empire Plan and SEHP, the savings shall be calculated by the Department as the average annual paid claims amount per Dependent determined to be ineligible by the vendor multiplied by the number of Dependents disenrolled. The annual paid claims per Dependent shall be calculated by the Department as the claims paid for each Dependent determined ineligible for the period 2010-2014 divided by the number of months such Dependent was enrolled in the Plan during that period multiplied by 12.

PLUS

6.11.2b For HMO Dependents, annual savings calculated as the difference between Family and Individual 2014 Net Premium multiplied by the number of Family Policies that changed to Individual as a result of all Dependents being determined to not be eligible.

PLUS

6.11.2c Annual savings of Medicare Part B Premium reimbursement paid for Medicare Dependents determined not eligible by the Contractor based on the standard 2014 monthly Medicare Part B Premium amount.

PLUS

6.11.2d For Enrollees with a Family Policy who are participating in the Opt-Out Program, there will be an annual savings of \$2,000 in instances where all the Enrollee's Dependents are determined not eligible.

ARTICLE VII: PERFORMANCE GUARANTEES

7.1.0 The Parties agree that the following guarantees and the corresponding credit amounts for failure to meet the Contractor Performance Guarantees shall be implemented effective the first Day following a 60-Day Implementation Period. 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 VII, 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 Department for failure to perform and audit credit amounts, as determined pursuant to Article X of this Agreement, shall be made in such amounts as determined by the Department to be final. Upon such determination, the Department shall notify the Contractor, in writing, and the Contractor shall apply such amounts as a credit against the quoted fee in accordance with Article X of this Agreement within thirty (30) Days of receiving such notification by the Department.

7.2.0 Implementation and Start-up Guarantee and Credit Amount

7.2.1 Guarantee: The Contractor guarantees that all implementation and start-up activities listed in Section 6.3.0 of this Agreement will be in place on the Implementation Date.

7.2.2 Credit Amount: If the Contractor fails to complete all Implementation and start-up activities within the Implementation Period, the Contractor shall credit against the Project Fees \$1,250 per Day that the Contractor fails to assume full operational responsibility to the satisfaction of the Department.

7.3.0 Call Center Availability Guarantee and Credit Amount

7.3.1 Guarantee: The Contractor guarantees the call center toll-free telephone line will be operational and available to callers at least ninety-eight percent (98%) of the Contractor's Call Center Hours. The call center availability will be reported daily and may transition to weekly at the discretion of the Department, and calculated for the term of the Agreement.

7.3.2 Credit Amount: For each .01 to 1% below the standard of ninety-eight percent (98%) that the Contractor's toll-free telephone line is not operational and available to callers during the Contractor's Call Center Hours, the Contractor shall credit against the Project Fees the amount of \$10,000.

7.4.0 Call Center Telephone Response Time Guarantee and Credit Amount

7.4.1 Guarantee: The Contractor guarantees the call center toll-free telephone line will be answered by a call center representative within 45 seconds at least ninety percent (90%) of the time during the Contractor's Call Center Hours.

The call center response time will be reported daily and may transition to weekly at the discretion of the Department, and calculated for the term of the Agreement.

7.4.2 Credit Amount: For each .01 to 1% of incoming calls to the Contractor's telephone line below the standard of ninety percent (90%) that is not answered by a call center representative within 45 seconds, Contractor shall credit against the Project Fees the amount of \$10,000.

7.5.0 Telephone Abandonment Rate Guarantee and Credit Amount

7.5.1 Guarantee: The Contractor guarantees that incoming calls to the Contractor's call center toll-free telephone line in which the caller disconnects prior to the call being answered by a call center representative will not exceed the standard of three percent (3%) of total incoming calls. The call center telephone abandonment rate will be reported daily and may transition to weekly at the discretion of the Department, and calculated for the term of the Agreement.

7.5.2 Credit Amount: For each .01 to 1% of incoming calls to the Contractor's call center telephone line in which the caller disconnects prior to the call being answered by a call center representative in excess of the standard of three percent (3%) of total incoming calls, the Contractor shall credit against the Project Fees the amount of \$10,000.

7.6.0 Telephone Blockage Rate Guarantee and Credit Amount

7.6.1 Guarantee: The Contractor guarantees that incoming calls to the call center toll-free telephone line that are blocked by a busy signal shall not exceed the standard of one percent (1%) of total incoming calls. The call center telephone line blockage rate will be reported daily and may transition to weekly at the discretion of the Department, and calculated for the term of the Agreement.

7.6.2 Credit Amount: For each .01 to 1% of incoming calls to the call center toll-free telephone line that are blocked by a busy signal, in excess of the

standard of one percent (1%) of total incoming calls, the Contractor shall credit against the Project Fees the amount of \$10,000.

7.7.0 Secure Online Web Portal Guarantee and Credit Amount

7.7.1 Guarantee: The Contractor must guarantee that ninety-five percent (95%) of all documents submitted by Enrollees, regardless of method of submission, will be uploaded, processed and viewable on the Contractor's secure online web portal within three (3) Business Days of receipt and one-hundred percent (100%) will be uploaded, processed and viewable on the Contractor's secure online web portal within five (5) Business Days of receipt. The document processing time shall be reported weekly and calculated for the term of the Agreement.

7.7.2 Credit Amount: For each .01 to 1% below the standard of ninety-five percent (95%) of all documents received that are not uploaded, processed and viewable on the Contractor's secure online web portal within three (3) Business Days, the Contractor shall credit against the Project Fees the amount of \$10,000. Additionally for each .01 to 1% below the standard of one hundred percent (100%) of all documents received that are not uploaded, processed and viewable on the Contractor's secure online web portal within five (5) Business Days, the Contractor shall credit against the Project Fees the amount of \$10,000.

7.8.0 Amnesty Period, Eligibility Period, and Appeal and Reinstatement Period(s) Guarantee and Credit Amount

7.8.1 Guarantee: The Contractor must guarantee that all Amnesty Period and Eligibility Verification Period tasks will be completed within one (1) year of the Agreement start date and all Appeal and Reinstatement Period(s) tasks will be completed within fifteen (15) months of Agreement start date.

7.8.2 Credit Amount: For each month or partial month that all Amnesty Period and Eligibility Verification Period tasks are not completed within one (1) year of the Agreement start date and all Appeal and Reinstatement Period(s) tasks that are not completed within fifteen (15) months of the Agreement start date,

the Contractor shall credit four percent (4%) of the total Project Fees charged under the Agreement for all DEA Project Services.

7.9.0 Reporting Guarantee and Credit Amount

7.9.1 Guarantee: The Contractor must guarantee that accurate management reports as specified in Section 6.10.0 of this Agreement will be delivered to the Department no later than their respective due dates inclusive of the date of receipt and supply the reports in an electronic format (Microsoft Access, Excel, Word) as determined by the Department.

7.9.2 Credit Amount: For each management report that is not received by its respective due date, the Contractor shall credit against the Project Fees \$1,250 per report per each Business Day between the due date and the date the management report is received by the Department inclusive of the date of receipt.

7.10.0 Return on Investment Guarantee and Credit Amount

7.10.1 Guarantee: The Contractor must guarantee a ROI of at least 3:1 for the administration of the Amnesty Period and the Eligibility Verification Period: Total savings of at least three (3) times the total DEA Project cost. Total savings shall be calculated by the Department, as outlined in Section 6.11.0 of this Agreement, and shall be based on the Plan (Empire, SEHP or HMO) the member is enrolled in at the time of the audit.

7.10.2 Credit Amount: If total savings calculated by the Department is less than three (3) times the total DEA Project cost charged under the Agreement, the Contractor shall credit against the total Project Fees the difference between three (3) times the total DEA Project cost and actual total savings as calculated by the Department, not to exceed the total Project Fees charged under the Agreement.

ARTICLE VIII: MODIFICATION OF PROJECT SERVICES

8.1.0 In the event that laws or regulations enacted by the Federal government and/or the State have an impact upon the conduct of this Agreement in such a manner that the

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

- 8.2.0** In the event that the State and the unions representing State Employees enter into collective bargaining agreements, or the State otherwise requires changes in Plan design elements or requirements the Department shall notify the Contractor of such revisions and shall provide the Contractor with a reasonable time within which to implement such revisions.
- 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 DEA Project Services as of the Effective Date and which the Contractor is required to perform or deliver under this Agreement, either Party may submit a written request to initiate review of the fee(s) received by the Contractor for services provided and guarantees made by the Contractor under the terms of this Agreement, accompanied by appropriate documentation. The Department reserves the right to request, and the Contractor shall agree to provide additional information and documentation the Department deems necessary to verify that a modification of the fees or guarantees is warranted. The Department will agree to modify the fee(s) to the extent necessary to compensate the Contractor for documented additional costs determined by the Department to be reasonable and necessary. The Contractor will agree to modify the fee (s) to the extent necessary to relieve the Department of the obligation to pay for Project Services that are no longer required. The Department will agree to modify guarantees as determined by the Department to be necessary to reflect DEA Project Services modifications. Should the Parties agree to modify the fee(s) and/or guarantees, such approval shall be subject to written amendment and approval by OSC and the AG. The Contractor shall implement changes as required by the Department with or without final resolution of any fee proposal.
- 8.4.0** The Department or the Offeror may initiate negotiations to adjust the single quoted flat fee for the administration of the Amnesty Period and Eligibility Verification Period, in the event the actual referral of Family Policies is 10% less than or 10% greater than the Family Policies count at the time the IFB is released. Any agreement regarding any

changes in the proposed fee must be through amendment to the Contract as approved by the Office of the State Comptroller.

ARTICLE IX: DATA SHARING AND OWNERSHIP

- 9.1.0** All data related to the Department Program is the property of the State.
- 9.2.0** Except as directed by a court of competent jurisdiction, or as necessary to comply with applicable New York State or Federal law, or with the written consent of the Enrollee/Dependent, the Contractor shall not share, sell, release, or make the data available to third parties in any manner without the prior written consent of the Department.

ARTICLE X: PAYMENTS/ (CREDITS) TO/FROM THE CONTRACTOR

- 10.1.0** The Contractor agrees to manage such financial transactions in accordance with the following:
- 10.1.1** For Project Services rendered during the term of the Agreement, the sole and exclusive fees/expenses chargeable to and payable by the State under the Agreement will be those as quoted by the Contractor in Exhibit V-Cost Exhibit of this Agreement, as applicable;
- 10.1.2** Any credit amounts due from the Contractor to the Department for failure to meet the performance guarantees set forth in Article VII of this Agreement shall be applied as a credit against the Project Fees charged to the DEA Project Services. Alternatively, the Department may request and receive payment of any performance guarantee amount directly from the Contractor, as opposed to a credit against the Project Fees payable to the Contractor;
- 10.1.3** Ten percent (10%) of each invoice amount will be withheld from each quoted fee amount paid to the Contractor (Surety Withhold). The total of all Surety Withhold amounts withheld will be due to the Contractor upon the Department's written acceptance of the completed Project Services and submission of an accurate invoice by the Contractor. Should the Contractor's Project Services ultimately not be accepted by the Department, the Contractor will be considered in default of the Agreement and the Agreement

shall be subject to termination for cause. In such case of default, the Contractor shall forfeit all Surety Withhold amounts withheld, refund any monies paid to the Contractor during the DEA Project Services and forfeit its right to reimbursement by the Department of any and all costs incurred by the Contractor under the Agreement.

- 10.2.0** Upon submission of an accurate invoice, the Contractor shall be paid twenty percent (20%) of the total quoted fee for the Project forty five-days after the Implementation Date.
- 10.3.0** Upon submission of accurate invoices, the Contractor shall be paid the remaining quoted fee agreed upon with the Department according to the following schedule, which assumes the Project will take fifteen (15) months to complete:
- 10.3.1** Twenty percent (20%) of the total quoted fee ninety days after the Implementation Date;
- 10.3.2** Twenty percent (20%) of the quoted fee one hundred eighty days after the Implementation Date;
- 10.3.3** Twenty percent (20%) of the quoted fee two hundred seventy days after the Implementation Date;
- 10.3.4** The final twenty percent (20%) of the quoted fee, adjusted for any performance guarantee credits, will be paid sixty days after completion of the Project to the Department's satisfaction. In the event that the performance guarantee amounts due to the Department exceed the final payment due to the Contractor, the Department shall notify the Contractor, in writing, the amount due from the Contractor under this Agreement. Such amount shall be paid to the Department forty five days of the date of the letter; and
- 10.3.5** The Department reserves the right to adjust the payment schedule if the projected time to complete the project changes significantly.
- 10.4.0** Upon final audit determination by the Department, any audit liability amount assessed by the Department shall be paid/credited to the DEA Project Services 30 Days after the date of the Department's final determination; and

10.5.0 This Agreement is subject to Article XI-A of NYS Finance Law. The Contractor agrees that DEA Project Services provided under this Agreement shall continue in full force and effect for a minimum of at least 30 Days beyond the payment due date as set forth in this Article X. If after the 35th calendar day after receipt of an accurate invoice, as set forth in this Article X of this Agreement, 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 this 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, this Agreement shall also remain in full force and effect.

ARTICLE XI: REPORTS

11.1.0 Daily Reports/Files

- 11.1.1** Verification Status Summary Report – The Contractor must provide, in a format acceptable to the Department, a report detailing information on each letter mailed and received including number of letters mailed, number of responders, number of Amnesty Period requests, number of complete documentation received, number of incomplete documentation received, number of non-responders, number of returned mail, number of Appeals received, number of Appeals accepted, and number of Appeals rejected. The report will be required daily and may transition to weekly at the sole discretion of the Department;
- 11.1.2** Call Center Statistics – The Contractor must provide, in a format acceptable to the Department, a report detailing each day's call center activity including, but not limited to, the number of calls received, telephone response rate, telephone abandonment rate, and telephone blockage rate. The report will be required daily and may transition to weekly at the sole discretion of the Department; and
- 11.1.3** Reinstatement File – The Contractor must provide, in a format acceptable to the Department, a report identifying those Dependents that are terminated during the audit and acceptable documentation is subsequently received prior to the completion of the DEA Project. The report will be required on a daily

basis and must include all Reinstatements processed on the previous Business Day. Refer to “Reinstate File” tab in Exhibit III.E of this Agreement for the file layout.

11.2.0 Weekly Reports/Files:

- 11.2.1 Secure Online Portal Statistics** – The Contractor must provide, in a format acceptable to the Department, a report detailing information on the number of documents received daily and the number and percent (%) processed within three (3) Business Days and the percent (%) processed within five (5) Business Days;
- 11.2.2 Weekly Management Summary Report** – The Contractor must provide, in a format acceptable to the Department, a report detailing progress of the DEA Project and the milestones met;
- 11.2.3 File of all Imaged Eligibility Documentation** – The Contractor must provide, in a format acceptable to the Department, one (1) or more files of images of all eligibility documentation received, Enrollee correspondence received, and Contractor communications to Enrollees. Refer to Exhibit III.G of this Agreement for the file layout;
- 11.2.4 File of Returned Mail** – The Contractor must provide, in a format acceptable to the Department, a complete listing of mail returned to the Contractor due to incorrect addresses. Refer to the “Return Mail Layout” tab in Exhibit III.E of this Agreement for the layout; and
- 11.2.5 Terminated and Deceased File** – The file shall be sent from the Department to the Contractor on a weekly basis after the Amnesty Period and will identify Enrollees and/or Dependents who have had coverage terminated or were identified as deceased after the initial population was identified for Amnesty. Refer to the “Term and Deceased File Layout” tab in Exhibit III.E of this Agreement for a file layout.

11.3.0 Final/Other Frequencies Reports/Files:

- 11.3.1** Results File – The Contractor must provide, in a format acceptable to the Department, a report identifying Dependents to be terminated from coverage. A file will be required at the end of the Amnesty Period and the end of each Phase of the Eligibility Verification Period. Refer to the “Results File Layout” in Exhibit III.E of this Agreement for the file layout;
- 11.3.2** Ad Hoc Reports – The Contractor must provide, in a format acceptable to the Department, ad hoc reports or other data analysis to monitor Project Services and contract compliance. The format, frequency, and due dates for such reports, if any, will be specified by the Department to the Contractor during the term of the Agreement;
- 11.3.3** Guarantee Report – The Contractor must provide, in a format acceptable to the Department, a report summarizing the Contractor’s compliance with all Agreement guarantees (with the exception of the ROI Guarantee, which will be calculated by the Department) This report is to be provided 30 Days after the conclusion of the DEA Project; and
- 11.3.4** Final Project Report – The Contractor must provide, in a format acceptable to the Department, a report summarizing the DEA Project outcome and suggestions to improve the Department’s management of Dependent eligibility. This report is to be provided 90 Days after the conclusion of the DEA Project Services

ARTICLE XII: TERMINATION

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

- 12.1.0** The State retains the right to cancel this Agreement without cause and in its sole discretion, provided that the Department shall give written notice to the Contractor not less than thirty (30) Days prior to the date upon which termination shall become effective, such notice to be made via registered or certified mail, return receipt requested or hand delivered. The date of such notice shall be deemed to be the date of postmark in the case of mail or the date of hand delivery. This provision should not

be understood as waiving the State's right to terminate this Agreement for cause or to stop work immediately for unsatisfactory work, but is supplementary to that provision.

12.2.0 If the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, the State, in its sole discretion, may terminate this Agreement for cause or may exercise such other remedies as shall be available under this Agreement, at law and/or equity.

12.3.0 No delay or omission to exercise any right, power or remedy accruing to the State or DCS upon breach or default by the Contractor under this Agreement shall impair any such right, power or remedy, or shall be construed as a waiver of any such breach or default, or any similar breach or default thereafter occurring, nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing.

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

- 1) Terminate this Agreement in whole or in part;
- 2) Suspend, in whole or in part, payments due Contractor under this Agreement;
and
- 3) Pursue equitable remedies to compel Contractor to perform.

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

12.5.0 For Violation of Procurement Lobbying Law. DCS reserves the right to terminate this Agreement for cause in the event it is determined by DCS in its sole discretion that the certification filed by the Contractor in accordance with §139-j and/or §139-k of the New York State Finance Law was intentionally false or intentionally incomplete. Upon such finding, DCS may, at its sole option, exercise its termination right by providing ten (10)

days written notification to the Contractor, or providing notice in accordance with other written notification terms in this Agreement.

- 12.6.0** For Violation of Section 5-a of the Tax Law. DCS reserves the right to terminate this Agreement for cause in the event that Contractor fails to file a certification pursuant to section 5-a of the Tax Law or the Tax Department or OFT discovers that the certification(s) filed by the Contractor pursuant to section 5-a of the Tax Law is/are false. Upon such finding(s), DCS may exercise its termination right by providing written notification to the Contractor.
- 12.7.0** Termination Notice. Notices required by this section shall be provided consistent with Article 9 of Appendix B and Article VIII.
- 12.8.0** Mitigation of Costs. The Contractor shall not undertake any additional or new contractual obligations on or after the date of return receipt notice without the prior written approval of the State. On or after the date of return receipt notice and during the termination notice period, the Contractor shall take all commercially reasonable and prudent actions to close out unnecessary outstanding, existing obligations as economically as possible for the State.

ARTICLE XIII: TRANSITION

- 13.1.0** The State may require the Contractor to provide uninterrupted Project Services after Agreement termination/expiration as the State deems reasonable and necessary and/or as necessary for the State to comply with all legal requirements for establishing a new contract to continue the provision of Project Services ("Transition Period"). Transition Services, as defined below, shall be governed as follows:
- 13.1.1** Transition Period. The transition period shall be determined by the State, and Contractor will be notified of the period in writing. The State shall consult with the Contractor prior to making such determination. The State reserves the right to subsequently amend the transition period upon 30 Days advance written notice to the Contractor.
- 13.1.2** Transition Plan. The Contractor must, 120 Days prior to the end of this Agreement, or if this Agreement is terminated prior to the end of its term, within (45) Days of notification of termination, provide the Department with a

detailed written plan for transition which outlines, at a minimum, the tasks, milestones and deliverables associated with Project transition.

13.1.2a Within 15 Business Days from receipt of the Contractor's proposed Transition Plan, the Department 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 Department.

13.1.2b Within 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 Department.

13.1.2c The Contractor shall be responsible for transitioning the DEA Project Services in accordance with the approved Transition Plan.

13.1.2d The Contractor is required to provide Contractor-related obligations and deliverables to the Department through the final financial settlement of this Agreement, including but not limited to:

13.1.2d(1) Provide all Contractor-provided DEA Project Services received on or before the scheduled termination date of this Agreement; as well as for an additional 60 Days to ensure that payments sent in error will be processed, deposited and posted to enrollee/agency accounts in an accurate and timely manner;

13.1.2d(2) Complete all reports required in Article XI of this Agreement;

13.1.2d(3) Provide the DEA Project Services with sufficient staffing in order to address State audit requests and reports in a timely manner;

13.1.2d(4) Agree to fully cooperate with all Department or Office of State Comptroller (OSC) audits consistent with the

requirements of Article XIV "Audit Authority" of this Agreement and Appendices A and B.

13.1.2d(5) Perform timely reviews and responses to audit findings submitted by the Department and Comptroller's audit unit in accordance with the requirements set forth in Article XVII "Audit Authority" of this Agreement and Appendices A and B; and

13.1.2d(6) Remit reimbursement due the DEA Project Services within 15 Days upon final audit determination consistent with the process specified in Article XIV, "Audit Authority" and Article X "Payments/(Credits) To/From the Contractor" of this Agreement and Appendices A and B.

13.1.3 **No Interruption in Service:** At all times during the transition period and unless directed otherwise in writing by the State, the Contractor shall continue all contractual obligations set forth in this Agreement until such time as the State (i) has approved the Contractor's proposed Transition Plan, and (ii) an orderly transition to the State, a third party, or the successor Contractor has been completed pursuant to the approved Transition Plan. The Contractor has been completed pursuant to the approved Transition Plan. The Contractor shall be required to meet its contractual obligations pursuant to this paragraph notwithstanding the issuance of a termination for cause or convenience by the State.

13.1.4 **State Responsibilities for Transition:** The State shall assume responsibility for Transition Program management. A Program manager responsible for coordinating Transition activities, maintaining the Transition task schedule, and approving Transition deliverables shall be appointed.

13.1.5 **Compensation for Transition Services:** Contractor shall be reimbursed for Transition Services performed during the Transition Period at the rates set forth in the Agreement.

ARTICLE XIV: AUDIT AUTHORITY

- 14.1.0** In addition to the Audit Authority requirements specified in Appendices A and B to this Agreement, the Contractor acknowledges that the Department has the authority to conduct financial and performance audits of the Contractor's delivery of Project services in accordance with this Agreement and any applicable State and federal statutory and regulatory authorities;
- 14.2.0** The Contractor shall maintain and make available documentary evidence necessary to perform the 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; pertinent contracts; key subcontracts; and correspondence;
- 14.3.0** The Contractor shall make available for audit all data in its computerized files that is relevant to and subject to this Agreement. Such data may, at the Department's discretion, be submitted to the Department in machine-readable format, or the data may be extracted by the Department, or by the Contractor under the direction of the Department;
- 14.4.0** The Contractor shall support audits conducted by the Department, Office of the State Comptroller or any designee of these agencies, as follows, including but not limited to:
- 14.4.1** Providing ample audit resources including access to the Contractor's online system to the Department and OSC at their respective offices through the date of the final financial settlement of this Agreement;
- 14.4.2** Providing full cooperation with all Department and/or OSC audits consistent with the requirements of Appendices A and B and as set forth in this Agreement including provision of access to all confidential information when required for audit purposes as determined by the Department and/or OSC as appropriate. The Contractor must respond to all State (including OSC) audit requests for information and/or clarification within 15 Business Days. The Contractor must perform timely reviews and respond in a time period specified by the Department to preliminary findings submitted by the

Department or the OSC's audit unit in accordance with the requirements of Article XIV "Audit Authority" in this Agreement.

- 14.5.0** The Contractor shall, at the Department's request, and in a time period specified by the Department, search its files, retrieve information and records, and provide to the auditors such documentary evidence as they require. The Contractor shall make sufficient resources available for the efficient performance of audit procedures;
- 14.6.0** The Contractor shall comment on the contents of any audit report prepared by the Department and transmit such comments in writing to the Department within 30 Days of receiving any audit report. The response will specifically address each audit recommendation. If the Contractor agrees with the recommendation, the response will include a work plan and timetable to implement the recommendation. If the Contractor disagrees with an audit recommendation, the response will give all details and reasons for such disagreement. Resolution of any disagreement as to the resolution of an audit recommendation shall be subject to the Dispute Resolution provision set forth in Appendix B of this Agreement;
- 14.7.0** 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 Department within 10 Days after receipt of such audit report by the Contractor; and
- 14.8.0** 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 Department Contracts.

ARTICLE XV: CONFIDENTIALITY

- 15.1.0** In addition to the Confidentiality requirements specified in Appendices A and B to this Agreement, the following provisions shall apply:
- 15.1.1** All enrollee records relating to this Agreement are confidential and shall be used by the Contractor solely for the purpose of carrying out its obligations under this Agreement, for measuring the performance of the Contractor in accordance with the performance guarantees set forth in Section VII of this

Agreement, and for providing the Department with material and information as may be specified elsewhere in this Agreement;

- 15.1.2** Except as directed by a court of competent jurisdiction, or as necessary to comply with applicable New York State or Federal law, or with the written consent of the Enrollee/Dependent, no records may be otherwise used or released to any party other than the Department by the Contractor, its officers, employees, agents, consultants, Key Subcontractors or Affiliates either during the term of this Agreement or in perpetuity thereafter. Deliberate or repeated accidental breach of this provision may, at the sole discretion of the Department, be grounds for termination of this Agreement;
- 15.1.3** The Contractor, its officers, employees, agents, consultants and/or any Key Subcontractors or Affiliates agree to comply, during the performance of this 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 this Agreement, with particular emphasis on such information relating to Enrollees and Dependents;
- 15.1.4** The Contractor shall be responsible for assuring that any agreement between the Contractor and any of its officers, employees, agents, consultants and/or Key Subcontractors or Affiliates contains a provision that strictly conforms to the various confidentiality provisions of this Agreement; and
- 15.1.5** The Contractor shall promptly advise the Department of all requests made to the Contractor for information regarding the performance of services under this Agreement, including, but not limited to, requests for any material and information provided by the Department, except as required by Key Subcontractors or Affiliates solely for the purpose of fulfilling the Contractor's obligations under this Agreement or as required by law.

ARTICLE XVI: USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION

- 16.1.0** 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 Department or may be created or received by the Contractor on behalf of the Department in Contractor’s capacity as a business associate. All PHI received or created by the Contractor in Contractor’s capacity as a business associate and as a consequence of its performance under this Agreement is referred to herein collectively as “Department’s PHI.”
- 16.2.0** The Contractor acknowledges that the Department administers on behalf of New York State several group health plans as that term is defined in the Health Insurance Portability and Accountability Act’s (HIPAA) 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). 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 as administrator of the “covered entities” 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. To the extent Contractor acts as a HIPAA “business associate” of the group health plans identified as “covered entities” in this Section 16.2.0, Contractor shall adhere to the requirements as set forth in Article XV of this Agreement.

16.3.0 Permitted Uses and Disclosures of the Department's PHI: The Contractor may create, receive, maintain, access, transmit, use and/or disclose the Department's PHI solely in accordance with the terms of this Agreement. In addition, the Contractor may use and/or disclose NYSHIP's PHI to provide data aggregation services relating to the health care operations of the Department. Further, the Contractor may use and disclose NYSHIP'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.

16.4.0 Nondisclosure of NYSHIP's PHI: The Contractor shall not create, receive, maintain, access, transmit, use or further disclose the NYSHIP'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.

16.5.0 Safeguards: The Contractor shall use appropriate, documented safeguards to prevent the use or disclosure of NYSHIP'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 that satisfy the standards set forth in the HIPAA Security Rule at 45 C.F.R. §§ 164.308, 164.310, and 164.312, along with corresponding policies and procedures, as required by 45 C.F.R. § 164.316, 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 accesses, or that it transmits on behalf of the Department pursuant to this Agreement to the same extent that such electronic PHI would have to be safeguarded if credited, received, maintained, accessed or transmitted by a group health plan identified herein.

16.6.0 Breach Notification

16.6.1 Reporting: The Contractor shall report to the Department any breach of unsecured PHI, including any use or disclosure of NYSHIP's PHI otherwise than as provided for by this Agreement, of which the Contractor becomes aware. An acquisition, access, transmission, use or disclosure of NYSHIP's PHI that is unsecured in a manner not permitted by HIPAA or this Agreement is presumed to be a breach unless the Contractor demonstrates that there is a low probability that NYSHIP's PHI has been compromised based on the Contractor's risk assessment of at least the following factors: (i) the nature and extent of NYSHIP's PHI involved, including the types of identifiers and the likelihood of re-identification; (ii) the unauthorized person who used NYSHIP's PHI or to whom the disclosure was made; (iii) the unauthorized person who used NYSHIP's PHI was actually acquired or viewed; and (iv) the extent to which the risk to NYSHIP's PHI has been mitigated. Further, the Contractor shall report to the Department any security incident of which it becomes aware subject to Section 16.6.5. "Security incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information, or interference with system operations in an information system. The Contractor shall notify the Department within 5 (five) Business Days of the date the Contractor becomes aware of the event for which reporting is required by this Section 16.6.1.

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

16.6.2a The date of the breach incident;

16.6.2b The date of the discovery of the breach;

16.6.2c A brief description of what happened;

- 16.6.2d** A description of the types of unsecured PHI that were involved;
- 16.6.2e** Identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the breach;
- 16.6.2f** 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
- 16.6.2g** Any other details necessary to complete an assessment of the risk of harm to the individual.
- 16.6.3** The Department will be responsible for providing notification to individuals whose unsecured PHI has been or is reasonably believed to have been accessed, acquired or disclosed as a result of a breach, as well as the Secretary of the U.S. Department of Health and Human Services and the media, as required by 45 CFR Part 164.
- 16.6.4** The Contractor shall maintain procedures to sufficiently investigate the breach, mitigate losses, and protect against any future breaches, and to provide a description of these procedures and the specific findings of the investigation to the Department upon request.
- 16.6.5** 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.
- 16.6.6** 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.
- 16.7.0 Associate’s Agents:** The Contractor shall require all of its agents or key Subcontractors to whom it provides NYSHIP’s PHI, whether received from the Department or created or received by the Contractor on behalf of the Department, agree by way of written contract

or other written arrangement, to the same restrictions and conditions on the access, use, and disclosure of PHI that apply to the Contractor with respect to NYSHIP's PHI under this Agreement.

16.8.0 Availability of Information to the Department: The Contractor shall make available to the Department such information and documentation as the Department may require regarding any disclosures of PHI by the Contractor to fulfill the Department's obligations to provide access to, to provide a copy of, and to account for disclosures of NYSHIP's PHI in accordance with HIPAA and its implementing regulations. The Contractor shall provide such information and documentation within a reasonable amount of time of its receipt of the request from the Department. Contractor must provide the Department with access to NYSHIP's PHI in the form and format requested, if it is readily producible in such form and format; or if not, in a readable hard copy form or such other form and format as agreed to by the Parties, provided, however, that if NYSHIP's PHI that is the subject of the request for access is maintained in one or more designated record sets electronically and if requested by the Department, Contractor must provide the Department with access to the requested PHI in a readable electronic form and format.

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

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

16.11.0 Termination:

16.11.1 This Agreement may be terminated by the Department at the Department's discretion if the Department determines that the Contractor, as a business

associate, has violated a material term of this Article or of this Agreement with respect to the Contractor's obligations under this Article.

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

16.12.0 Indemnification: The Contractor agrees to indemnify, defend and hold harmless the State the group health plans identified herein, and the Department 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.

16.13.0 Miscellaneous:

16.13.1 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 and approved by the NYS Attorney General's Office and NYS Office of the State Comptroller. 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 HIPAA and its implementing regulations.

16.13.2 Survival: The respective rights and obligations of the Business Associate and the covered entities under HIPAA as set forth in this Article XV shall survive termination of this Agreement.

16.13.3 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, as of their respective compliance dates.

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

ARTICLE XVII NOTICES:

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

17.1.1 Via certified or registered United States mail, return receipt requested;

17.1.2 By facsimile transmission;

17.1.3 By personal delivery;

17.1.4 By expedited delivery service; or

17.1.5 By e-mail.

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

State of New York Department of Civil Service

Name: Mr. David Boland
 Title: Director, Employee Benefits Division
 Address: EBD, Room 1106, Albany, NY 12239
 Telephone Number: 518-473-1977
 Facsimile Number: 518-473-3292
 E-Mail Address: David.Boland@cs.ny.gov

Contractor

Name: (TBD)
 Title: (TBD)
 Address: (TBD)
 Telephone Number: (TBD)
 Facsimile Number: (TBD)
 E-Mail Address: (TBD)

- 17.3.0** Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.
- 17.4.0** The Parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) Days written notice to the other Party sent in accordance herewith. The Parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the Parties for purposes of implementation and administration/ billing, resolving issues and problems and/or for dispute resolution.

ARTICLE XVIII: IRAN DIVESTMENT ACT

- 18.1.0** As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) developed and maintains a list (prohibited entities list) of “persons” who are engaged in “investment activities in Iran” (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list was posted on the OGS website on August 10, 2012.
- 18.2.0** By entering into this Agreement, Contractor (or any assignee) certifies that it is not on the “Entities Determined To Be Non-Responsive Bidders/Offerors Pursuant to The New York State Iran Divestment Act of 2012” list (“Prohibited Entities List”) posted on the OGS website at <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on this Agreement any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend the Agreement, it must provide the same certification at the time this Agreement is renewed or extended. Contractor also agrees that any proposed Assignee of this Agreement will be required to certify that it is not on the Prohibited Entities List before the Department may approve a request for Assignment of this Agreement.

- 18.3.0** During the term of the Agreement, should the Department receive information that a person (as defined in State Finance Law 165-a) is in violation of the above-referenced certification, the Department will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 Days after the determination of such violation, then the Department shall take such action as may be appropriate including, but not limited to seeking compliance, recovering damages, or declaring the Contractor in default.
- 18.4.0** The Department reserves the right to reject any request for renewal, extension or assignment for an entity that appears on the Prohibited Entities List prior to the renewal, extension or assignment of this Agreement, and pursue a responsibility review with Contractor should it appear on the Prohibited Entities List hereafter.

ARTICLE XIX: RESPONSIBILITY TERMS

- 19.1.0** The Contractor is required to provide the Department with an updated Vendor Responsibility Questionnaire when requested to do so by the Department throughout the term of the Agreement. Regardless, the Contractor is required to report to the Department any material changes in the information reported in its initial Vendor Responsibility Questionnaire.
- 19.2.0** The Contractor shall at all times during the Agreement term remain responsible. The Contractor agrees, if requested by the Commissioner of the Department or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- 19.3.0** Suspension of Work (for Non-Responsibility): The Commissioner or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Agreement activity may resume at such time as the

Commissioner or his or her designee issues a written notice authorizing a resumption of performance under the Agreement.

- 19.4.0** Termination (for Non-Responsibility): Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Department officials or staff, the Agreement may be terminated by the Commissioner or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner or his or her designee to be non-responsible. In such event, the Commissioner or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

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

Agency Code: 08000

Agreement Number: C000XXX

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

NEW YORK STATE
DEPARTMENT OF CIVIL SERVICE

CONTRACTOR
[Insert Name of Contractor]

Deirdre Taylor
DEPUTY COMMISSIONER

By: _____

By _____

Date: _____

Name: _____

Title _____

Date: _____

INDIVIDUAL, CORPORATE OR PARTNERSHIP ACKNOWLEDGMENT

STATE OF _____ }
 : **SS.:**
COUNTY OF _____ }

On the ____ day of _____ in the year 20__, before me personally appeared: _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that _he resides at _____, Town of _____, County of _____, State of _____; and further that:

[Check One, as applicable]

(**If a corporation**): _he is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, _he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

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

Notary Public

Approved as to form:

Approved:

ERIC SCHNEIDERMAN
ATTORNEY GENERAL

THOMAS P. DINAPOLI
STATE COMPROLLER

By: _____

By: _____

Date: _____

Date: _____