
SECTION VII: AGREEMENT PROVISIONS**AGREEMENT NO. C000631**

THIS Agreement is entered into by and between New York State Department of Civil Service (“Department” or “The Department”), having its principal office at Agency Building 1, Albany, N.Y. 12239 and _____, a corporation authorized to do business in the State of New York with a principal place of business located at _____, and collectively referred to as “the Parties.”

WITNESSETH

WHEREAS, Civil Service Law Article XI requires the Department to establish a health insurance plan for the benefit of State Employees, Retirees, and their Dependents, and for the benefit of Participating Employers’ Employees, Retirees, and their Dependents; and

WHEREAS, the Department, oversees the enrollment eligibility of enrollees and the services of a Contractor to produce and distribute employee benefit cards on behalf of the Department for enrollees of the New York State Health Insurance Program for New York State employees, Participating Employers (PE’s) and Participating Agencies (PA’s); and

WHEREAS, on October 1, 2014, the Department issued an Invitation for Bid (IFB) entitled, “The Empire Plan Employee Benefit Card” (attached hereto as Exhibit B), to secure the services of a qualified organization to provide card production and reporting services; and

WHEREAS, after thorough review and evaluation by the Department of proposals received in response to the IFB, the Contractor’s Proposal (attached hereto as Exhibit C) 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 card production and reporting services, 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 Agreement** means the contract that results from this IFB between the Department and the Contractor.
- 1.3.0 Bid** means the submission by the Offeror in response to the IFB.
- 1.4.0 Business Day(s)** means every Monday through Friday, except for days designated as Business Holidays by the State.
- 1.5.0 Business Holiday(s)** means legal holidays observed by the State, including New Year's Day; Martin Luther King, Jr. Day; President's Day; Memorial Day; Independence Day; Labor Day; Columbus Day; Veteran's Day; Thanksgiving Day; Christmas Day.
- 1.6.0 Calendar Year/Annual** means a period of 12 months beginning with January 1 and ending with December 31.
- 1.7.0 Card Carrier** means a paper, cardstock or other acceptable medium designed to function as a holder (whether the cards are spot glued or perforated as a part of the holder), and able to carry printed content, for the benefit cards.

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- 1.8.0 Card/Employee Benefit Card** means an employee identification card that meets the specifications of this IFB.
- 1.9.0 Cardholder** means an individual covered by The Empire Plan for which an EBC has been requested to be produced or has been produced by the Contractor.
- 1.10.0 Contractor** means (TBD), the successful Offeror selected as a result of the evaluation of Offerors' Proposals submitted in response to this IFB and the Contractor who executes a Contract with the Department to provide Program Services.
- 1.11.0 Day(s)** means calendar days unless otherwise noted.
- 1.12.0 DCS or Department** means the New York State Department of Civil Service.
- 1.13.0 Defective EBC(s) and/or Card Carrier(s)** means an EBC and/or Card Carrier that does not meet the Program specifications set forth in the IFB, or, if after having been mailed, it is determined that the EBC was not properly matched with its associated Card Carrier. An EBC is defective if the Cardholder information contained in the EBC Data File is not properly displayed on the EBC. A Card Carrier is defective if the Cardholder information contained in the EBC Data File is not properly displayed on the Card Carrier.
- 1.14.0 Dependent** means the spouse, domestic partner, and children under twenty-six (26) years of age of an Enrollee who are eligibility for coverage under the New York State Health Insurance Program.
- 1.15.0 EBC Data File** means the electronic file transmitted by the Department to the Contractor containing the information, as set forth in Exhibit II.B, necessary to produce and distribute EBCs.
- 1.16.0 EBC Program/ Program/ Program Services or Services** means the entire scope of services to be provided by the Contractor pursuant to the terms and conditions of the Agreement.

- 1.17.0 The Empire Plan** means the self-insured comprehensive health benefit program administered by the New York State Department of Civil Service.
- 1.18.0 Employee** means “Employee” as defined in 4 NYCRR Part 73, as amended, or as modified by collective bargaining agreement.
- 1.19.0 Employee Benefit Card(s) or EBC** means benefit cards that meet the specifications of this IFB #2014-EBC-1.
- 1.20.0 Employee Benefits Division** means the functional unit within the Department of Civil Service which has responsibility for administering various employee benefit programs.
- 1.21.0 Employer** means “Employer” as defined in 4 NYCRR Part 73, as amended.
- 1.22.0 Enrollee** means a State, PE, or PA employee, former State, PE or PA employee, or other individual determined by the DCS to be eligible to enroll as the result of law, regulation, rules and/or collective bargaining, who is enrolled in the Empire Plan.
- 1.23.0 Envelope** means a flat paper container with windows and a sealable flap, used to enclose the card carrier and employee benefit card(s).
- 1.24.0 ET** means prevailing Eastern Time.
- 1.25.0 HIPAA** means Health Insurance Portability and Accountability Act of 1996.
- 1.26.0 Implementation Period** means the 60-day period of time subsequent to the Office of the State Comptroller’s approval of the Agreement that results from this IFB.
- 1.27.0 IFB or Procurement** means the Invitation For Bid entitled “The Empire Plan Employee Benefit Card #EBC 2014-1”, dated October 1, 2014, Exhibit B to this Agreement,

including all clarifications and supplemental requests for information made subsequent to the release of the IFB.

1.28.0 Key Subcontractor(s) means those vendor(s) with whom the Contractor subcontracts to provide Program Services and incorporated as a part of the Contractor's Program Team.

1.29.0 NYS means New York State.

1.30.0 NYSHIP means the New York State Health Insurance Program.

1.31.0 Offeror means a person or entity that submits a Proposal in response to this IFB.

1.32.0 OSC means the New York State Office of the State Comptroller.

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

1.34.0 Participating Employer (PE) means a public authority, public benefit corporation, or other public agency, subdivision, or quasi-public organization of the State which elects, with the approval of the President of the Civil Service Commission, to participate in the New York State Health Insurance Program.

1.35.0 President means the President of the Civil Service Commission who is also the Commissioner of the Department of Civil Service.

1.36.0 Production Cycle means the time period that elapses from when the Department, or its agent, makes the EBC Data File available to the Contractor until the Contractor presents the associated EBCs to the U.S. Postal Service for delivery to the Cardholder, exclusive of any time period where EBCs are stored by the Contractor prior to mailing at the Department' direction.

- 1.37.0 Proposal** means the Contractor’s Administrative Section, Technical Section, and Cost Section, including all responses to supplemental requests for clarification, information, or documentation, submitted during the course of the Procurement.
- 1.38.0 Regulations of the President of the New York State Civil Service Commission** means those regulations promulgated by the President of the Civil Service Commission under the authority of Civil Service Law, Article XI, as amended, and including, but not limited to those regulations to be promulgated as 4 New York Code of Rules and Regulations (NYCRR) Part 73.
- 1.39.0 Retiree** means any person defined as a Retiree pursuant to the terms of 4 NYCRR Part 73, as amended.
- 1.40.0 Specifications** means a detailed description of Employee Benefit Card including Card Stock, Card Carrier Stock, Envelope Stock and Card Processing and Design.
- 1.41.0 State** means New York State as a whole.

ARTICLE II: AGREEMENT DURATION AND AMENDMENTS

- 2.1.0** This Agreement shall be subject to and effective upon the approval of the New York State Attorney General’s Office (“AG”) and the NYS Office of the State Comptroller (“OSC”). The term of the Agreement shall include a sixty 60-day implementation period followed by five (5) years of Program Services, including but not limited to the production and distribution of Employee Benefit Cards and associated management reports. It is the Department’s intent that this implementation period shall begin following OSC approval of the Agreement, with all other contractual responsibilities to begin on the first day following the sixty 60-day implementation period after OSC approves the Agreement and subject to the termination provisions contained herein.

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

ARTICLE III: INTEGRATION

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

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

ARTICLE IV: DOCUMENT INCORPORATION AND ORDER OF PRECEDENCE

4.1.0 The Agreement consists of:

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

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

4.1.3 Appendix B – Standard Clauses for All Department Contracts;

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

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

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

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- 4.1.6a** Exhibit A: the MacBride Act Statement and the Non-Collusive Bidding Certification;
- 4.1.6b** Exhibit B - Invitation for Bid entitled “The Empire Plan Employee Benefit Card”, dated October 1, 2014; and Exhibit B-1 - Official Department Response to Questions Raised Concerning the IFB, dated (TBD);
- 4.1.6c** Exhibit C - Contractor’s Proposal; and, ExhibitC-1 Written Responses to clarifying questions regarding Contractor’s Proposal;
- 4.1.6d** Exhibit D - Employee Benefit Card Specifications;
- 4.1.6e** Exhibit E - Employee Benefit Card Fee 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** Forth, Appendix D – Participation by Minority Group Members and Women With Respect to State Contracts: Requirements and Procedures;
- 4.1.7e** Fifth, any Amendments to the body of the Agreement;
- 4.1.6f** Sixth, the body of the Agreement;

4.1.6g Seventh, Exhibit B, the Invitation for Bids entitled, “The Empire Plan Employee Benefit Card, dated October 1, 2014”; and Exhibit B1, the official Department response to questions raised concerning the IFB, dated **(TBD)**;

4.1.7h Eighth, Exhibit C -Contractor’s Proposal; and, Exhibit C1 Written Responses to clarifying questions regarding Contractor’s Proposal,

4.1.7i Ninth, Exhibit D - Employee Benefit Card Specifications

4.1.7j Tenth, Exhibit E- Employee Benefit Card 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 the Program Services in accordance with the Agreement and the authority to do business in the State of New York or any other governmental jurisdiction in which the Program Services are to be delivered.

5.2.0 Contractor agrees that it shall perform its obligations under this Agreement in accordance with all applicable federal and NYS laws, rules and regulations, policies and/or guidelines now or hereafter in effect, including but not limited to the requirements set forth in Chapter 56 of the Laws of 2010.

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

ARTICLE VI: PROGRAM SERVICES

6.1.0 During the term of this Agreement, the Contractor will be responsible for the performance of those services/tasks as described herein this Article VI “Program Services”, of this Agreement and any and all other Program Services as referenced in the IFB.

6.1.1 The Empire Plan Identification Card Development/Implementation: The Contractor agrees to be prepared to assume responsibility for the production and distribution of weekly EBCs, Card Detail reports and Summary reports sixty (60) Days after approval of the Agreement by OSC.

6.1.2 Administration: The Contractor must maintain an organization sufficient to administer, manage and oversee all aspects of the Agreement during implementation and operation. Specifically the Contractor must:

6.1.2a Establish and/or dedicate a team of employees to the State and be able to maintain and adjust staffing patterns at appropriate levels to provide services as required by the Department;

6.1.2b Maintain an administrative structure to oversee the billing, payment and processing of invoices to the State for work performed under the Agreement;

6.1.2c The Contractor’s account team must respond to questions and requests reported by the Department in a timely manner and within urgent timeframes when requested;

6.1.2d Notify the Department in writing of any changes in the personnel designated to bind the Agreement;

6.1.2e Notify the Department in writing of changes in key personnel, Key Subcontractor(s) or production facility locations specifically identified in Exhibit C of this Agreement, the Contractor's Proposal. Substituted personnel, Key Subcontractor(s) or production locations must have comparable or better qualifications or facilities to those outlined in the Exhibit C and must meet the Minimum Mandatory Requirement #3 as described in Exhibit C; and

6.1.2.f Correct any and all errors in any reports, materials, documents and/or services provided or prepared by the Contractor pursuant to this Agreement due solely to an error by the Contractor. The Contractor will correct such errors at its own expense provided the Department notifies the Contractor of such errors and furnishes to the Contractor data and information the Department may be required to provide in order for the Contractor to make such corrections after delivery of any such report, material, document or service.

6.2.0 Materials, Processing and Prototype Specifications: The Contractor shall comply with the following Materials Processing and Prototype Specifications,

6.2.1 The materials used in the production of EBCs, Card Carriers and Envelopes shall meet the materials specifications set forth in Exhibit II.E of this IFB.

6.2.2 The Contractor may utilize any combination of offset, digital or flexographic methods for producing a durable EBC that meets the specifications of this IFB.

6.2.3 The layout of the EBC, Card Carrier and Envelope shall meet the Prototype and Information Specifications set forth in Exhibit II.E. A sample of the current EBC, Card Carrier, and Envelope is set forth in Exhibit II.A.

6.2.4 A prototype of the Contractor's final EBC, Card Carrier and Envelope shall be submitted to the Department for approval during the Implementation Period. The

Department shall, in its sole discretion, determine if the Contractor's EBC, Card Carrier, and Envelope meet the specifications set forth in Exhibit II.E.

- 6.2.5** The Contractor shall be able to customize, modify, and produce new or modified EBC layouts and Card Carrier contents within sixty (60) days' notice at the written direction of the Department.
- 6.2.6** The Contractor's production process shall display the Enrollee's name and up to five (5) Dependents' names on the EBC and attach up to four (4) EBCs with the same Enrollee identification number onto a single Card Carrier addressed to the Enrollee or Dependent, as applicable and insert it in a single Envelope that meets the specifications set forth in Exhibit II.E of this IFB. The Contractor must be capable of producing and distributing EBCs in all possible production scenarios as set forth in Exhibit II.G.
- 6.2.7** The Contractor shall pre-sort and mail the Envelopes containing the EBC(s) and Cards Carriers through the U.S. Postal Service (USPS), first class to all Enrollees and Dependents who reside in the United States and Canada in a manner that ensures compliance with USPS technology and that results in maximum postal discounts that comply with HIPAA requirements.
- 6.2.8** The Contractor shall ensure that: 1) no Defective EBCs, Card Carriers or Envelopes are mailed; 2) all EBCs are mailed to the correct Cardholder(s); and 3) the Department is not invoiced for any Defective EBCs, Card Carriers or Envelopes or any associated postage charges.
- 6.2.9** The Contractor shall ensure that all Program materials including blank EBCs, Card Carriers and/or Envelopes that contain the NYSHIP or NYS or logo pre-printed Program information are securely maintained and properly accounted for by the Contractor.

6.2.10 In the event of unforeseen emergency circumstances which affect the Contractor's ability to adhere to its Production Cycle, the Contractor shall immediately notify the Department and provide the following:

6.2.10a The circumstance(s) precluding production/delivery;

6.2.10b A statement of whether or not succeeding production/deliveries will be affected and when the situation will be corrected; and

6.2.10c The Contractor shall remain responsible for producing the associated EBCs and reports prior to the following week's Production Cycle.

6.3.0 Weekly card production and distribution for new, duplicate and replacement EBCs

6.3.1 The Contractor shall produce and distribute EBCs reflecting the data contained in the Department's weekly EBC Data File that comply with EBC specifications, the Production Cycle and the performance standards set forth in this Section IV of the IFB.

6.3.2 The Contractor shall produce one EBC for Enrollees with individual coverage and two EBCs for Enrollees with family coverage who have five (5) or fewer Dependents. The Contractor shall produce additional EBCs for Enrollees having six (6) or more Dependents. Each EBC shall list up to six (6) covered names.

6.3.3 The Department anticipates placing weekly card production orders, but may request EBCs on a more frequent basis over the term of the Agreement. During each weekly Production Cycle, the Contractor shall complete all Program Services associated with the production and distribution of EBCs.

6.3.4 The Department will transmit to the Contractor a weekly computerized EBC Data File via secure transfer containing detailed benefit card data elements shown in Exhibit II.B.

- 6.3.5** Although EBC production/distribution must be in accordance with the Production Cycle, there may be unforeseen events outside the Contractor's control which affect the Contractor's ability to adhere to its Production Cycle (e.g. the untimely distribution of the EBC Data File by the Department, or the receipt of an EBC Data File that contains inaccurate or incomplete data). Likewise, there may be unforeseen events which are under the Contractor's control which affect the Contractor's ability to adhere to its Production Cycle (e.g., Contractor equipment malfunction). In either case, the Contractor must remain responsible for producing the associated EBCs and reports prior to the following week's Production Cycle, if possible.
- 6.4.0 Management Reports:** The Contractor shall create and electronically distribute to the Department in a HIPAA-compliant manner, accurate weekly Card Detail and Card Summary Reports, comparable to Exhibits II.C and II.D, within two (2) Business Days from the completion of each Production Cycle. The Department reserves the right to request reports be sent in paper or an electronic format that is searchable, or both.
- 6.5.0 Re-issuance of EBCs:** Should the Department require a complete or partial re-issuance of EBCs during the term of the Agreement, the Contractor shall agree to produce and distribute the EBCs and management reports. Routine weekly card Production Cycles will continue during the Production Cycle(s) for a complete or partial re-issuance. The Department does not anticipate that a complete re-issuance of EBCs to all Enrollees will occur during the term of the Agreement.
- 6.6.0 Administration:** The Contractor shall maintain an organization of sufficient size with staff that possess the necessary skills and experience to administer, manage and oversee all aspects of the Agreement resultant from this IFB during implementation, operation and transition. Specifically the Contractor shall:

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- 6.6.1** Establish and/or dedicate a team of qualified and experienced employees to the Department and maintain and adjust staffing patterns at appropriate levels to provide Program services as required by the Department;
- 6.6.2** Provide timely responses (within one [1] to two [2] Business Days) to questions and requests posed by the Department.
- 6.6.3** Notify the Department in writing of changes in key personnel, key Subcontractor(s), or production facility locations specifically identified in its Bid. Substituted personnel, key Subcontractor(s) or production locations shall have comparable or better qualifications or facilities to those outlined in the Bid.
- 6.7.0** **Billing Requirements:** The Contractor shall bill the Department and will be paid for the production and distribution of EBCs and associated Card Carriers and Envelopes in accordance with the requirements set forth in this IFB, and according to the Program Services fees quoted in the Contractor's completed Exhibit II.F. In addition to the quoted Program Services fees, the Offeror shall bill the Department and be reimbursed for actual USPS costs incurred in accordance with Section IV.A.2.a.vii.
- 6.7.1** The Contractor shall bill the Department and be paid for the production of: 1) EBCs, Card Carriers and Envelopes that meet the Program specifications set forth in this IFB; and 2) only those Defective EBCs, and Card Carriers produced by the Contractor that the Department directly caused to be defective. An EBC, Card Carrier and/or Envelope is defective if it does not meet the Program specifications set forth in the Exhibit II.E of the Agreement resultant from this IFB, or, if after having been mailed, it is determined by the Department that the EBC(s) was not properly matched with its associated Card Carrier. An EBC and/or Card Carrier is also defective if the Cardholder information contained in the EBC Data File provided by the Department is not properly displayed on the EBC and/or Card Carrier.

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- 6.7.2** The Contractor shall bill the Department and be reimbursed for the actual USPS charges, using the best U.S. Postal discounts available to the Program for mailing: 1) EBCs and/or Card Carriers and Envelopes that meet the Program specifications set forth in this IFB; and 2) Defective EBCs where the Department directly caused the EBCs and/or Card Carriers to be defective. The Contractor shall not bill or be reimbursed by the Department for any USPS charges the Contractor incurs to mail Defective EBCs that were not directly caused to be defective by the Department. The Contractor shall not bill and will not be reimbursed for any excess USPS charges incurred as a result of the Contractor's failure to qualify for the best U.S. Postal Service discounts available.
- 6.7.3** The Contractor will not be reimbursed for any postage charges associated with normal day-to-day functions undertaken by the Contractor to complete Program Services. Such postage charges are considered overhead expenses and, as such, included as a component of the Contractor's per EBC, Card Carrier and Envelope fees.
- 6.7.4** The Contractor shall invoice the Department, monthly in arrears, for all Program Services rendered during the preceding month, together with full supporting detail(s) to the Department's reasonable satisfaction and in a format required by the Department. Such invoices shall include, at a minimum, the quantity, unit price, and total amount due for EBCs, Card Carriers and Envelopes, as well as USPS charges. Accurate invoices shall be submitted to the Department for review, approval and payment by the 15th of every month. Upon review of the submitted invoices and verification of the charges, the Department will make best efforts to process all approved invoices within thirty (30) Days of their receipt; however, failure to make payment within said timeframe shall not be considered a breach of contract. Timeliness of payment and any interest to be paid to the Contractor for late payment shall be governed by Article XI-A of the State Finance Law.

6.7.5 The State of New York is not liable for any cost incurred by the Contractor in preparation for or prior to the approval of an executed contract by the Comptroller of the State of New York.

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 of the month following a sixty (60) day implementation period after the Office of the State Comptroller approves the Contract. 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 monthly fee in accordance with Article X of this Agreement within thirty (30) Days of receiving such notification by the Department.

7.2.0 Performance Guarantees and Credits: The Contractor shall contractually agree to the following performance guarantees and the corresponding credit amounts for failure to meet the guarantees.

7.2.1 Implementation and start-up Guarantee and Credit Amount

7.2.1a Guarantee: The Contractor guarantees that all implementation and start-up activities will be completed the first day of the month following a sixty (60) day Implementation Period after the Office of the State Comptroller

(OSC) approves the Agreement so that the Contractor can assume full operational responsibility for the services required by this IFB for the production and distribution of EBCs, Card Carriers and Envelopes and production of Card Detail Reports and Summary Reports.

7.2.1b Credit Amount: If the Contractor fails to complete all implementation and start-up activities within the Implementation Period, the Contractor shall credit against the Program's fees one thousand dollars (\$1,000) per Day that the Contractor fails to assume full operational responsibility to the satisfaction of the Department.

7.2.2 Production Cycle Guarantee and Credit Amount

7.2.2a Guarantee: The Contractor guarantees that each weekly Production Cycle shall be completed within the following time frames:

For orders $\leq 10,000$ cards, within three (3) Business Days from the date that the EBC Data File is made available by the Department;

For orders $> 10,000$ but $\leq 40,000$ cards, within four (4) Business Days from the date that the EBC Data File is made available by the Department;
and

For orders $> 40,000$ cards, within the number of Business Days equal to the number of EBCs requested in the EBC Data File divided by 10,000, and then rounded up to the next whole number.

7.2.2b Credit Amount: The Contractor shall credit against the Program's fees \$250 per Day, for each weekly Production Cycle that is not completed within the required timeframe as set forth in Section IV.A 2.a.vii of this IFB.

7.2.3 Report Guarantee and Credit Amount

7.2.3a Guarantee: The Contractor guarantees that accurate Card Detail and Card Summary Reports shall be delivered to the Department within two (2) Business Days from the completion of each Production Cycle.

7.2.3b Credit Amount: The Contractor's shall credit against the Program's fees \$250 per Day, for each management report not received within two (2) Business Days from the completion of each Production Cycle.

ARTICLE VIII: MODIFICATION OF PROGRAM SERVICES

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

8.2.0 In the event that the NYS and the unions representing State Employees enter into collective bargaining agreements, or the State otherwise requires changes in Plan design elements or requirements of the Agreement, the Department shall notify the Contractor of such changes and shall provide the Contractor with reasonable notice to implement such changes.

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 EBC Program as of the Effective Date and which the Contractor is required to perform or deliver under the Agreement, either Party may submit a written request to initiate review of the fee(s) received by the Contractor for services provided and guarantees made by the Contractor under the terms of the Agreement, accompanied by appropriate documentation. The DCS reserves the right to request, and the Contractor shall agree to provide additional information and

documentation the DCS deems necessary to verify that a modification of the fees or guarantees is warranted. The DCS will agree to modify the fee(s) to the extent necessary to compensate the Contractor for documented additional costs determined by DCS to be reasonable and necessary. The Contractor will agree to modify the fee (s) to the extent necessary to relieve the DCS of the obligation to pay for Program services that are no longer required. The DCS will agree to modify guarantees as determined by DCS to be necessary to reflect EBC Program 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 DCS with or without final resolution of any fee proposal.

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 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 The Contractor will bill the Department monthly.

10.1.2 Any credit amounts due from the Contractor to the Department for failure to meet the performance guarantees set forth in the Agreement shall be applied as a credit against the monthly fees charged to the EBC Program. Alternatively, the Department may request and receive payment of any performance guarantee

amount directly from the Contractor, as opposed to a credit against the monthly fees payable to the Contractor.

10.1.3 Upon final audit determination by the Department, any audit liability amount assessed by the Department shall be paid/credited to the EBC Programs within thirty (30) Days of the date of the Department's final determination.

10.1.4 This Agreement is subject to Article XI-A of NYS Finance Law. The Contractor agrees that EBC Program Services provided under the Agreement shall continue in full force and effect for a minimum of at least thirty (30) days beyond the payment due date as set forth in this Article X. If after the thirty-fifth (35) calendar day after receipt of an accurate invoice, as set forth in this Article X of the 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 the Agreement shall remain in full force and effect until such final decision is made, unless the Parties can come to a mutual agreement, in which case, the Agreement shall also remain in full force and effect.

10.2.0 The Contractor will be responsible for assessments as follows:

10.2.1 The Contractor shall calculate the applicable EBC each month from the applicable paid claims and may charge the EBC Program at the time this assessment is paid to the regulatory agency/intermediary by the Contractor.

10.2.2 The Contractor shall advise the Department of any new applicable assessments in a timely manner.

10.2.3 The Contractor shall bill the EBC Program for any new assessments within thirty (30) days after the amounts are paid to the regulating entity.

ARTICLE XI: TERMINATION OF AGREEMENT

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

11.1.1 The State retains the right to cancel all or any part of the Agreement without cause and in its sole discretion, provided that the Department must give written notice to the Contractor not less than thirty (30) Days prior to the date upon which termination must become effective, such notice to be made via registered or certified mail, return receipt requested or hand delivered. The date of such notice must be deemed to be the date of postmark in the case of mail or the date of hand delivery. This provision should not be understood as waiving the State's right to terminate the Agreement for cause or to stop work immediately for unsatisfactory work, but is supplementary to that provision. In the event of cancellation without cause by the State, the State agrees to negotiate a payment based on time, materials and other documented expenses directly attributable to the Agreement actually expended by Contractor;

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

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

- 11.1.4** If, due to default that remains uncured for the period provided herein, a third party must commence to perform Contractor's obligations under the Agreement, the State must thereafter be released from all obligations to Contractor hereunder, including any obligation to make payment to Contractor, provided however that the State must continue to be obliged to pay for any and all Program Services provided prior to any such date. If the State employs a third party to perform Contractor's obligations under the Agreement, Contractor must be liable for the payment of any cost differential that the State incurs as a result of having to employ such third party to cure or resolve the issue;
- 11.1.5** In the event of the Contractor's default, in addition to availing itself of specific remedies set forth in the Agreement, the State may pursue all legal and equitable remedies for breach. In addition to pursuing any other legal or equitable remedies, the State must have the right to take one or more of the following actions:
- 11.1.5a** Terminate the Agreement in whole or in part;
 - 11.1.5b** suspend, in whole or in part, payments due Contractor under the Agreement; and
 - 11.1.5c** pursue equitable remedies to compel Contractor to perform.
- 11.1.6** The Contractor shall be liable for any and all excess costs for remedies pursued by the State, and for costs incurred by the State in procuring alternate Services;
- 11.1.6a** **For Violation of Procurement Lobbying Law:** The Department reserves the right to terminate the Agreement in the event it is determined by the Department in its sole discretion that the certification filed by the Contractor in accordance with §139-j and/or §139-k of the New York State Finance Law was intentionally false or intentionally incomplete. Upon such finding, the Department may, at

its sole option, exercise its termination right by providing 10 days written notification to the Contractor, or providing notice in accordance with other written notification terms in the Agreement;

11.1.6b **For Violation of Section 5a of the Tax Law:** The Department reserves the right to terminate the Agreement in the event that Contractor fails to file a certification pursuant to Section 5-a of the Tax Law or the Tax Department or OFT discovers that the certification(s) filed by the Contractor pursuant to Section 5-a of the Tax Law is/are false. Upon such finding(s), the Department may exercise its termination right by providing written notification to the Contractor;

11.1.6c **Termination Notice:** Notices required by this section must be provided consistent with Appendix B, Section 9 of this Agreement; and

11.1.6d **Mitigation of Costs:** The Contractor must 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 must take all commercially reasonable and prudent actions to close out unnecessary outstanding, existing obligations as economically as possible for the State.

ARTICLE XII: TRANSITION

12.1.0 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:

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- 12.1.1 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 thirty (30) days advance written notice to the Contractor.
- 12.1.2 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 the 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 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.
- 12.1.3 State Responsibilities for Transition:** The State shall assume responsibility for Transition project management. A project manager responsible for coordinating Transition activities, maintaining the transition task schedule, and approving transition deliverables shall be appointed.

ARTICLE XIII: AUDIT AUTHORITY

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

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

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- 13.1.2** The Contractor must maintain and make available documentary evidence necessary to perform such reviews. Documentation maintained and made available by the Contractor may include, but is not limited to, source documents, procedure manuals and system access.
- 13.2.3** Credit amounts due from the Contractor to the Department as a result of performance audits performed must be made in such amounts as determined by the Department to be final. Upon such determination, the Department must notify the Contractor in writing, and the Contractor must apply such amounts as a credit against the Program's fee within fourteen (14) Days of receiving such notification from the Department.
- 13.2.0** In addition to the Audit Authority requirements specified in Appendices A and B to this Agreement, the following provisions shall apply:
- 13.2.1** The Contractor acknowledges that the Department has the authority to conduct financial and performance audits of the Contractor's delivery of Program services in accordance with the Agreement and any applicable State and federal statutory and regulatory authorities;
- 13.2.2** Such audit activity may include, but not necessarily be limited to, the following activities:
- 13.2.2a** Assessment of the Contractor's information to the extent necessary to verify accuracy of data in the reports provided to the Department in accordance with this Agreement.
- 13.2.2b** 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;

13.2.2c The Contractor shall make available for audit all data in its computerized files that is relevant to and subject to the Agreement. Such data may, at the 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;

13.2.3 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:

13.2.3a Providing ample audit resources including access to the Contractor's online system to the Department and OSC at their respective offices through the date of the final financial settlement of the Agreement;

13.2.3b 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 fifteen (15) Business Days. The Contractor must perform timely reviews and respond in a time period specified by the Department to preliminary findings submitted by the Department or the OSC's audit unit in accordance with the requirements of Article XIII "Audit Authority" in this Agreement. 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;

13.2.3c 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 thirty 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;

13.2.3d 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 ten (10) Days after receipt of such audit report by the Contractor; and

13.3.0 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 XIV: CONFIDENTIALITY

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

14.1.1 All enrollee records relating to the Agreement are confidential and shall be used by the Contractor solely for the purpose of carrying out its obligations under the Agreement, for measuring the performance of the Contractor in accordance with the performance guarantees set forth in Section VII of this Agreement, and for

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

- 14.1.2** 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 the Agreement or in perpetuity thereafter. Deliberate or repeated accidental breach of this provision may, at the sole discretion of the Department, be grounds for termination of the Agreement;
- 14.1.3** The Contractor, its officers, employees, agents, consultants and/or any Key Subcontractors or Affiliates agree to comply, during the performance of the Agreement, with all applicable Federal and State privacy, security and confidentiality statutes, including but not limited to the Personal Privacy Protection Law (New York Public Officer's Law Article 6-A, as amended), and its implementing regulations, policies and requirements, for all material and information obtained by the Contractor through its performance under the Agreement, with particular emphasis on such information relating to Enrollees and Dependents;
- 14.1.4** 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
- 14.1.5** 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 XV: USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION

15.1.0 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. All PHI received or created by the Contractor as a consequence of its performance under this Agreement is referred to herein collectively as "Department's PHI."

15.2.0 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 Contractor is a HIPAA "business associate" of the Department as a consequence of the Contractor's provision of services to and/or on behalf of the Department within the context of the Contractor's performance under this Agreement, and that the Contractor's provision of such services may involve the disclosure to the Contractor of individually identifiable health information from the Department or from other parties on behalf of the Department, and also may involve the Contractor's disclosure to the Department of

individually identifiable health information as a consequence of the services performed under this Agreement.

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

15.4.0 Nondisclosure of the Department's PHI: The Contractor shall not use or further disclose the Department'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.

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

15.6.0 Breach Notification

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

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

15.6.2a the date of the breach incident;

15.6.2b the date of the discovery of the breach;

15.6.2c a brief description of what happened;

15.6.2d a description of the types of unsecured PHI that were involved;

15.6.2e identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the breach;

15.6.2f 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

15.6.2g any other details necessary to complete an assessment of the risk of harm to the individual.

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

15.6.4 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.

15.6.5 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.

15.6.6 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.

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

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

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

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

15.11.0 Termination

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

15.11.2 Disposition of the Department's PHI: At the time this Agreement is terminated, the Contractor shall, if feasible, return or destroy all of the

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

15.12.0 Indemnification: The Contractor agrees to indemnify, defend and hold harmless the State 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, 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.

15.13.0 Miscellaneous

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

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

15.13.3 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.

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

ARTICLE XVI: NOTICES

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

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

16.1.2 by facsimile transmission;

16.1.3 by personal delivery;

16.1.4 by expedited delivery service; or

16.1.5 by e-mail.

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

State of New York [Agency Name]

Name: (TBD)

Title: Director, Employee Benefits Division

Address:

Telephone Number: (TBD)

Facsimile Number: (TBD)

E-Mail Address: (TBD)

[Contractor Name]

Name: (TBD)

Title: (TBD)

Address: (TBD)

Telephone Number: (TBD)

Facsimile Number: (TBD)

E-Mail Address: (TBD)

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

16.3.0 The Parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other Party sent in accordance herewith. The Parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the Parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

ARTICLE XVII: IRAN DIVESTMENT ACT

17.1.0 As a result of the Iran Divestment Act of 2012 (for purposes of this section only hereinafter referred to as “Act”), Chapter 1 of the 2012 Laws of New York, a new provision was added to the State Finance Law (“SFL”), §165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (“OGS”) was charged with the responsibility to develop a list (“prohibited entities list”) of “persons” who are

engaged in “investment activities in Iran” (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list was posted on the OGS website on August 10, 2012.

17.2.0 By entering into the Agreement, Contractor certifies that it is not on the “Entities Determined To Be Non-Responsive Bidders/Offerors Pursuant to The New York State Iran Divestment Act of 2012” list (“Prohibited Entities List”) posted on the OGS website at <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on the 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 the Agreement is renewed or extended. Contractor also agrees that any proposed Assignee of the 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 the Agreement.

17.3.0 During the term of the Contract, should the Department receive information that a person (as defined in State Finance Law 165-a) is in violation of the above-referenced certification, the Department will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within ninety (90) days after the determination of such violation, then the Department shall take such action as may be appropriate and provided for by law, rule or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

17.4.0 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 the Agreement, and pursue a responsibility review with Contractor should it appear on the Prohibited Entities List hereafter.

ARTICLE XVIII: VENDOR RESPONSIBILITY

18.1.0 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.

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

Contractor: _____

Agreement Number: C000631

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

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

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

Date: _____

By: _____

Name: _____

Title: _____

CONTRACTOR

Date: _____

By: _____

Name: _____

Title: _____

STATE OF) ss:

COUNTY OF

On the _____ day of _____, _____, before me personally came _____, to me known, and known to me to be the person who executed the above instrument, who, being duly sworn by me, did for her/himself depose and say that (s)he is the _____ of _____ the corporation or organization described in and which executed the above instrument; and that (s)he signed his/her name thereto.

My commission expires: _____

NOTARY PUBLIC

Approved as to Form:
ERIC SCHNEIDERMAN
ATTORNEY GENERAL

Approved:
THOMAS P. DINAPOLI
COMPTROLLER

By: _____

By: _____

Date: _____

Date: _____