

SECTION VII: AGREEMENT PROVISIONS**AGREEMENT NO. C000696**

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, 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, NYSHIP is administered by the President of the New York State Civil Service Commission, who also serves as the Commissioner of the Department (President), subject to New York State laws and regulations including the Civil Service Law, the State Finance Law Article XI, and their respective implementing regulations; and

WHEREAS, NYSHIP has determined that it wishes to receive technical compliance and annual statutory reporting related to the employer shared responsibility provisions of the Patient Protection and Affordable Care Act (PPACA) as more fully described in the Contract ("Project Services"), and

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

WHEREAS, the Department, in reliance upon the expertise of the Contractor, desires to engage the Contractor to deliver PPACA Compliance Services, pursuant to the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual promises set forth below, 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 RFP.
- 1.4.0 **Business Day(s)** means Monday through Friday, except for those designated as Business Holidays.
- 1.5.0 **Business Holiday(s)** means legal Holidays observed by the State.
- 1.6.0 **Calendar Year/Annual** means a period of 12 months beginning with January 1 and ending with December 31.
- 1.7.0 **Commissioner** means the Commissioner of the New York State Department of Civil Service.
- 1.8.0 **Contract or Agreement** means the Agreement entered into between the Parties resultant from this RFP.
- 1.9.0 **Contractor** means the successful Offeror selected as a result of the evaluation of Offeror's Proposals submitted in response to this RFP and who executes a Contract with the Department to provide Program Services.
- 1.10.0 **Day(s)** mean calendar Days unless otherwise noted.
- 1.11.0 **Department or DCS** means the New York State Department of Civil Service.
- 1.12.0 **Empire Plan** means the experience-rated health plan administered by the NYS Department of Civil Service to provide health insurance benefits for the employees, retirees and eligible dependents of New York State and NYSHIP Participating Agencies and Participating Employers. It has four components, the Medical Program, the Hospital Program, the Managed Mental Health and Substance Abuse Program, and the Prescription Drug Program.
- 1.13.0 **Employee** means a State employee, former State 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.

- 1.14.0 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.
- 1.15.0 Employer** means “Employer” as defined in 4 NYCRR Part 73, as amended.
- 1.16.0 ET** means prevailing Eastern Time.
- 1.17.0 HIPAA** means Health Insurance Portability and Accountability Act of 1996, as amended.
- 1.18.0 Implementation Plan** means a mutually agreed to, and final, detailed plan for the implementation period of the program which denotes firm deadlines for start-up activities and implementation of services as specified in the Agreement and required for the administration of the program.
- 1.19.0 Information Security Plan (ISP)** means a plan which states all of the security policies and procedures for the protection of data, equipment and facilities, including receipt of and transmission of data in accordance with Department standards, policies and procedures; ISP must agree to the policies, terms, and conditions stated in this Agreement and Appendices A, B, and C.
- 1.20.0 Key Subcontractor(s)** means those vendors with whom the Contractor subcontracts to provide Program Services and incorporates 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 that results from this RFP, 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 account team.
- 1.21.0 MWBE** means Minority-and Women-Owned Business Enterprises.
- 1.22.0 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).

- 1.23.0 Normal Business Hours** means Monday- Friday 8:00 a.m.- 5:00 p.m. ET, unless specified otherwise by the Department.
- 1.24.0 NYBEAS** means the New York Benefits Eligibility & Accounting System, a computerized enrollment system utilized by the Department for the administration of employee benefits.
- 1.25.0 NYS or State** means the State of New York (including the New York State Department of Civil Service).
- 1.26.0 Offeror** means any responsible and eligible entity submitting a responsive Proposal to this RFP. It shall be understood that references in the RFP to “Offeror” shall include said entity’s proposed Key Subcontractor or Affiliates, if any.
- 1.27.0 OSC** means the New York State Office of the State Comptroller.
- 1.28.0 President** means the President of the Civil Service Commission and the Commissioner of the Department.
- 1.29.0 Project Services** means the entire scope of services provided in Article VII of the Contract in accordance with the terms and conditions set forth in the Contract.
- 1.30.0 Proposal or Submissions** means the Contractor’s Administrative Proposal, Technical Proposal and Cost Proposal, including all responses to supplemental requests for clarification, information, or documentation submitted during the course of the Procurement.
- 1.31.0 RFP or Procurement** means the Request for Proposals, entitled “PPACA Compliance Services,” dated April 13, 2018.
- 1.32.0 Service Level Standard** means the Department’s expected performance level of service that the Contractor must meet or exceed for the New York State Dispute Resolution Program.
- 1.33.0 Services** means the PPACA Compliance Services to be provided by the Contractor as set forth in this Agreement.
- 1.34.0 Software** means computer instructions or data that can be stored electronically.
- 1.35.0 State** means the State of New York.
- 1.36.0 Statutory IRS Reporting Requirements** means those responsibilities and requirements imposed upon the State as a large self-insured employer per the provisions of the

Patient Protection and Affordable Care Act (PPACA), including but not limited to: 1) collecting employee payroll, enrollment, and other information to determine federal "full time" or "part-time" status and offer of employer-sponsored coverage; 2) determining State compliance with Employer Shared Responsibility provisions and other aspects of PPACA; 3) preparing and mailing Form 1095-B or 1095-C to all applicable individuals, including NYSHIP enrollees and qualifying full-time employees that declined coverage; and 4) electronically transmitting all necessary forms (Form 1094-B, Form 1094-C, Form 1095-B copies, and/or Form 1095-C copies) to the Internal Revenue Service.

1.37.0 Transition Plan means a written plan for transition, which outlines, at a minimum, the tasks, milestones and deliverables associated with transitioning the Program to a new contractor.

1.38.0 Virus means any computer code, whether or not written or conceived by Contractor, which intentionally disrupts, disables, harms, or otherwise impedes in any manner the operation of the Product, or any other associated software, firmware, hardware, or computer system (such as local area or wide-area networks), including aesthetic disruptions or distortions, but does not include security keys or other such devices installed by Product manufacturer.

ARTICLE II: AGREEMENT DURATION AND AMENDMENTS

2.1.0 The Agreement shall be subject to and effective upon the approval of the New York State Attorney General's Office ("AG") and the NYS Office of the State Comptroller ("OSC"). The term of the Agreement shall include an implementation period followed by five (5) and a half years of Program Services. It is the Department's intent that contractual obligations will begin on January 1, 2018, or as soon as practicable following OSC's approval of the contract, through and including June 30, 2023, and subject to the termination provisions contained herein. Specifically, obligations related to Workforce Analytics of this Agreement will be completed by December 31, 2022 and obligations related to Statutory IRS Reporting of this Agreement will be completed by June 30, 2023.

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 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 of Civil Service Contracts;

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

4.1.5 Appendix C-1 – Information Security Standards

4.1.6 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; Appendix D-2 –MWBE Utilization Reporting Responsibilities under Article 15-A;

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

4.1.7a Exhibit A: which includes the MacBride Act Statement; and the Non-Collusive Bidding Certification;

4.1.7b Exhibit B: the Request for Proposals entitled, “PPACA Compliance Services,” dated April 13, 2018, and Exhibit B-1, the official Department response to questions raised concerning the RFP;

4.1.7c Exhibit C: the Contractor’s Proposal and Exhibit C-1: the official transcript of the Management Interview and related materials clarifying the Contractor’s Proposal; and

4.1.7d Exhibit D: the Schedule of Full-Time Employee Determination Fee and Statutory IRS Reporting Fee.

- 4.2.0** In the event of any inconsistency in, or conflict among, the document elements of the Agreement identified above, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the following order:
- 4.2.1** First, Appendix A - Standard Clauses for all New York State contracts;
 - 4.2.2** Second, Appendix B - Standard Clauses for all Department of Civil Service contracts;
 - 4.2.3** Third, Appendix C – Third Party Connection and Data Exchange Agreement;
 - 4.2.4** Fourth, Appendix C-1–Informaiton Security Standards
 - 4.2.5** Fifth, 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;
 - 4.2.6** Sixth, any Amendments to the body of the Agreement;
 - 4.2.7** Seventh, the body of the Agreement;
 - 4.2.8** Eighth, Exhibit A – the MacBride Act Statement and the non-collusive bidding certification;
 - 4.2.9** Ninth, Exhibit B – the Request for Proposal entitled, “PPACA Compliance Services,” dated April 13, 2018 and Exhibit B-1, the official Department response to questions raised concerning the RFP;
 - 4.2.10** Tenth, Exhibit C – the Contractor’s Proposal and Exhibit C-1, the official transcript of the Management Interview and related materials clarifying the Contractor’s Proposal;
 - 4.2.11** Eleventh, Exhibit D, the Schedule of Workforce Analytics Fee and Statutory IRS Reporting Fee.
- 4.3.0** The terms, provisions, representations, and warranties contained in the Agreement shall survive performance hereunder.

ARTICLE V: LEGAL AUTHORITY TO PERFORM

- 5.1.0** The Contractor 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** The Contractor agrees that it shall perform its obligations under this Agreement in accordance with all applicable Federal and NYS Laws, rules and regulations, policies and/or guidelines now or hereafter in effect.
- 5.3.0** 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: MODIFICATION OF PROGRAM SERVICES

- 6.1.0** In the event that laws or regulations enacted by the Federal Government and/or the State of New York have an impact upon the conduct of this Agreement in such a manner that the Department determines that any design elements or requirements of the Agreement must be revised, the Contractor shall notify the Department of any such revisions and shall provide the Contractor with a reasonable time within which to implement such revisions.
- 6.2.0** 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 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 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 Program services that are no longer required. The Department will agree to modify guarantees as determined by the Department to be necessary to reflect PPACA Compliance 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.

ARTICLE VII: PROJECT SERVICES

7.1.0 The Contractor shall provide all of the Program Services as set forth herein this Article for the entire term of the Agreement in such a manner so as to be in compliance with the terms and conditions set forth in this Agreement. All Program Services shall be provided in accordance with the federal Patient Protection and Affordable Care Act and its implementing regulations, and other NYS and Federal Law as may be applicable. In addition, the Contractor shall deliver the Program Services in such a manner so as to comply with all provisions of this Agreement. The Contractor may provide certain services through key subcontracts with the prior review and approval of the Department. Each subcontract entered into with a corporate entity separate from the Contractor for the purpose of delivering Program Services must be maintained throughout the term of the Agreement unless such change is approved in writing by the Department. The Department must be explicitly identified as the intended third party beneficiary of the subcontract. The Contractor must maintain significant financial, legal, and audit oversight of any of its Key Subcontractors. The Contractor remains fully responsible for all Services and actions performed under this Agreement. The Contractor shall submit all key subcontracts to the Department for its approval. The Contractor shall submit all such key subcontracts with no redactions to the Department before execution for its review and approval. **(Note: Costs/Fees for all Services required under this Agreement shall be included in the Contractor's Workforce Analytics Fee or Statutory IRS Reporting Fee).**

7.2.0 Account Team

7.2.1 The Contractor must maintain, for the entire term of the Agreement, an organization of sufficient size with the skills and experience necessary to administer, manage, and oversee all aspects of the PPACA Compliance Services during implementation, operation, and transition.

7.2.2 The Contractor must propose a Program manager with the ability to address direct inquiries by the Department within one (1) Business Day, for the entire term of the Agreement. It is preferred that the Program manager possess at least two (2) years of experience serving as a manager. The Contractor must advise the Department immediately if replacement of the Program manager is contemplated during the term of the Agreement.

- 7.2.3** The Offeror's assigned account team must be experienced, accessible and sufficiently staffed to provide timely responses (1 (one) Business Day) to concerns and inquiries posed by the Department;
- 7.2.4** The Contractor must ensure that there is a process in place for the account team to gain immediate access to appropriate corporate resources and senior management necessary to meet all Program requirements and to address any issues that may arise during the performance of the Agreement.
- 7.2.5** The Contractor's assigned account team must immediately notify the Department of any actual or anticipated events impacting PPACA Compliance Services such as but not limited to legislation, litigation, and operational issues.
- 7.2.6** The Contractor's assigned account team must ensure that the Department is compliant with all relevant PPACA legislative and statutory requirements. If the Contractor is unable to comply with any legislative or statutory requirements, the Department must be notified in writing immediately.

7.3.0 Workforce Analytics

- 7.3.1** Using the guidelines of Section 4980H of the Internal Revenue Code (IRC) and payroll records provided by the State, the Contractor must determine the full-time status of all employees for work performed in calendar year 2018 and all years covered under the Agreement resulting from this RFP.
- 7.3.2** The contractor must provide reporting to the State that clearly documents and illustrates all employees' full-time status under Section 4980H of the IRC for work performed in calendar year 2018 and all years covered under the Agreement. Such reporting shall include, but not be limited to, the beginning and end dates of all employees' measurement periods, administrative periods, and required stability periods.
- 7.3.3** Using employee health insurance eligibility information provided by the State, the Contractor must provide reporting to the State that clearly documents and illustrates any and all employees deemed to be full-time employees for purposes of PPACA, but are not under an offer of health insurance coverage. Such reporting must be provided on a monthly basis and must explicitly state the percentage of full-time state employees under an offer of coverage.

- 7.3.4** Establish a secure connection with appropriate Department Information Technology (IT) systems to facilitate the required exchange of information between the Department and the Offeror no later than December 31, 2018. Contractor's ability to meet this guarantee is contingent upon the State's ability to submit complete initial data files to the Contractor, for the purposes of vetting data transfer setup.
- 7.3.5** Providing a file platform that is capable of securely receiving and loading each file sent by the Department. The Contractor shall have the files (that meet the quality standards for loading) successfully loaded within one (1) week of receipt from the Department. The Contractor must have within the one (1) week reviewed the file for data errors and content to accurately update employee records to determine Full-Time status. The Department will transmit files to the Contractor on a monthly basis. The Contractor must also have the capability to receive any special update files from the Department containing additions and deletions, including emergency updates, if required.
- 7.3.6** Initial Testing of File Transmission:
- 7.3.6a** Performing an initial load of each employee record file to commence upon receipt of a test file from the Department during Program implementation. The files include Payroll File, Enrollment File, Credited Leave File, Offer of Coverage File, and Employment Status File; file specifications are provided in Exhibit II.A-E;
- 7.3.6b** Testing to determine if the employee record files loaded correctly and interfaces with the Contractor's file platform. The selected Contractor shall submit enrollment test files to the Department for review, provide the Department with secure, online access required to ensure accurate loading of Program data, and promptly correct any identified issues to the satisfaction of the Department;
- 7.3.7.** Termination of the Agreement, the Offeror must commit to fully cooperate with the successor contractor to ensure the timely, smooth transfer of information necessary to administer the services under any subsequent Agreement. This will include, but not limited to, any information applicable to Workforce Analytics for this Agreement.

7.3.8 The Offeror must load and review one hundred percent (100%) of all files that meet the quality standards for loading into their database within one (1) week of release by the Department.

7.3.9 The Offeror must deliver accurate reports to the Department, as specified in section 7.3.2 and 7.3.3 of this Agreement, no later than two (2) weeks from the day the Offeror successfully loads the relevant file provide by the Department, inclusive of the date of receipt.

7.4.0 Statutory IRS (IRC Section 6055 and 6056) Reporting

7.4.1 The Contractor shall be responsible for providing complete administration for PPACA reporting requirements included in IRC Section 6055 and 6056 for calendar year 2018 and thereafter. Such responsibilities shall include the items listed below:

7.4.1a The Contractor shall prepare, print, and distribute Form 1095-C to all required individuals by the due date established by the federal government. Required individuals shall include State employees and other individuals enrolled in the Empire Plan through the State of New York including State retirees, COBRA enrollees, and other groups. The term "Required individuals" does not include employees or other Empire Plan enrollees of employers other than the State of New York participating in the Empire Plan. The Contractor must provide a paper copy of Form 1095-C to all required individuals. The Contractor proposed fee included in Exhibit III. B this RFP, shall be inclusive of all costs, including postage, associated with this task.

7.4.1b The Offeror must complete all required Statutory IRS Reporting as specified in Article 7.4.0 of this Agreement; this includes reporting for the final 2022 tax year under the Agreement;

7.4.1c The Contractor shall prepare and transmit all required information on behalf of the State to the federal government by the required due date. This information shall include Form 1094-C and required data from all distributed copies of Form 1095-C to required individuals.

7.4.1d The Offeror must be able to incorporate into the Form 1094-C filing to the IRS counts of Form 1095-Cs provided to State employees at Cornell University, who independently of this RFP determines its Full-Time population and provides

Form 1095-C to this population. Form 1094-C will be filed under one Employer Identification Number (EIN).

7.4.1e At the request of the State, the Contractor must agree to provide corrected copies of Form 1095-C to required individuals. The fee for each corrected Form 1095-C provided to individuals will be equal to the IRS Statutory Reporting Fee guaranteed by the Offeror under this Agreement for the applicable tax year. If the need to send corrected forms stems from an error made by the Contractor, no additional fee shall be charged to the State for the production, printing, and distribution of such forms

7.4.1f The Contractor must report all errors identified by the IRS to the State. At the request of the State, the Contractor must agree to correct this information and resubmit it to the IRS. The fee for submitting corrected information to the IRS will be equal to the IRS Statutory Reporting Fee guaranteed by the Offeror in this Agreement for the applicable tax year. If the need to send corrected information to the IRS stems from an error made by the Contractor, no additional fee shall be charged to the State for the resubmission of such information.

7.4.1g The Contractor must provide access to an online system that will allow the State to access, reprint, and distribute copies of Form 1095-C. Such access shall be at no additional cost to the State.

(Amended May 4, 2018)

7.4.1h The Department will allow the Offeror to participate in any negotiations with the Internal Revenue Service with respect to penalties assessed to the Department under Sections 6055 and 6056 of the Internal Revenue Code (IRC) resulting from the Contractor's failure to meet timely filing requirements.

7.5.0 Maintenance of Confidential Employee Records

7.5.1 The Contractor shall be responsible for maintaining all Employee records in a confidential manner. Such record keeping must be HIPAA compliant and shall include, at a minimum, maintenance of confidential employee data including employment records, health insurance enrollment records, and personal information.

7.5.2 The Contractor shall use appropriate, documented safeguards to prevent the use or disclosure of employee data other than as required 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.

ARTICLE VIII: PERFORMANCE GUARANTEES

The Parties agree that the following guarantees and corresponding credit amounts for failure to meet each Performance Guarantee shall be implemented effective January 1, 2019. The Contractor acknowledges and agrees that failure to perform the service features in such a manner which either meets or exceeds any and/or all of the Performance Guarantee(s) as set forth in this Article and/or fails to make any payment(s) of any such 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 due from the Contractor to the Department for failure to perform any service feature at the Performance Guarantee level as set forth below, and audit credit amounts, as determined pursuant to Article XVI of this Agreement, shall be made at the time and in such amounts as determined by the Department to be final. Credit amounts are cumulative. Upon such determination, the Department shall notify the Contractor, in writing, and the Contractor shall apply such amounts as a credit against the Workforce Analytics Fee, or as requested by the Department, within thirty (30) calendar Days of receiving such written notification from the Department.

8.1.0 Workforce Analytics Reporting Guarantee and Credit Amount

8.1.1 Guarantee: The Plan's service level standard requires that accurate Workforce Analytics reporting as specified in Section 7.3.0 of this Agreement, be delivered to the Department no later than two (2) weeks from the day the Offeror successfully loads the relevant file provided by the Department.

8.1.2 Credit Amount: The Contractor's quoted amount to be credited against the Contractor's monthly Workforce Analytics Fee for each management report listed in Section 7.3.0 of this Agreement that is not received two (2) weeks from the day the Department's files are successfully loaded, is \$_____ per report for each Calendar day, and portion thereof, between the due date and the date the accurate management report is received by the Department inclusive of the date of receipt.

8.2.0 Statutory IRS (IRC Section 6055 and 6056) Reporting Guarantee and Credit Amount

8.2.1 Guarantee: The Contractor guarantees that all Statutory IRS Reports, as specified in Section 7.4.0 of this Agreement, will be delivered to the required parties under Section 6055 and 6056 of the Internal Revenue Code no later than their respective due dates, inclusive of the date of receipt.

8.2.2 Credit Amount: The Contractor's quoted percent of federal penalty paid to the Department is _____ percent (%) of any and all federal timely filing penalties incurred solely due to the Contractor's failure to meet federal filing deadlines and standards under Section 6055 and 6056 of the Internal Revenue Code.

8.3.0 Data Management Guarantees and Credit Amount

8.3.1 Guarantee: The Contractor agrees that one hundred percent (100%) of all Department files that meet the quality standards for loading must be loaded into the Contractor's database and reviewed within one (1) week of release by the Department.

8.3.2 Credit Amount: The Contractor's quoted amount to be credited against the monthly Workforce Analytics Fee for each Calendar Day, and portion thereof when one hundred percent (100%) of the files that meet the quality standards for loading are released by the Department and are not loaded into the Contractor's database and reviewed within one (1) week from the date the of release, is \$_____.

ARTICLE VI: DATA SHARING AND OWNERSHIP

9.1.0 All claims and other data related to the Program is the property of the State. Upon the request of the Department, the Contractor shall share appropriate data with the Department's consultants.

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 Employee, 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. This provision shall survive the expiration of this Agreement.

ARTICLE X: PAYMENT FOR SERVICES RENDERED

10.1.0 The Department agrees to reimburse the Contractor in accordance with the rates, procedures, and time frames provided for in this Article of the Agreement.

10.2.0 The Contractor shall submit for approval to the Department a monthly invoice for the Workforce Analytics Fee in the format required by the Department. The Contractor shall bill the Department on an annual basis for the Statutory IRS Reporting Fee after the successful transmission of required information to the IRS in the format required by the Department.

Upon review of the submitted invoices, and verification of the charges by the Department, the Department will make best efforts to process all acceptable 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.

10.3.0 The fee for submitting corrected Form 1095-C to individuals and information to the IRS will be equal to the Statutory IRS Reporting Fee proposed by the Offeror in Exhibit III.B of the RFP.

10.4.0 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 XI: USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION

11.1.0 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 the 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.”

11.2.0 The Contractor acknowledges that the Department administers on behalf of New York State several group health plans as that term is defined in HIPAA’s implementing regulations at 45 CFR Parts 160 and 164, and that each of those group health plans consequently is a “covered entity” under HIPAA. These group health plans include NYSHIP, which encompasses the Empire Plan as well as participating health maintenance organizations; the Dental Plan, and the Vision Plan. In this capacity, the Department is responsible for the administration of these “covered entities” under HIPAA. The Contractor further acknowledges that the Department has designated NYSHIP and the Empire Plan as an Organized Health Care Arrangement (OHCA). The Contractor further acknowledges that the Contractor is a HIPAA “business associate” of the group health plans identified herein as “covered entities” as a consequence of the Contractor’s provision of certain 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 11.2.0, Contractor shall adhere to the requirements as set forth in this Article of this Agreement.

11.3.0 *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 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 or any instances of which it is aware in which the confidentiality of the information has been breached.

11.4.0 *Nondisclosure of the Department’s PHI:* The Contractor shall not create, receive, maintain, access, transmit, 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 practicable 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.

11.5.0 *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 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 created, received, maintained, accessed or transmitted by a group health plan identified herein.

11.6.0 Breach Notification

11.6.1 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. An acquisition, access, transmission, use or disclosure of the Department'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 the Department's PHI has been compromised based on the Contractor's risk assessment of at least the following factors: (i) the nature and extent of the Department's PHI involved, including the types of identifiers and the likelihood of re-identification; (ii) the unauthorized person who used the Department's PHI or to whom the disclosure was made; (iii) whether the Department's PHI was actually acquired or viewed; and (iv) the extent to which the risk to the Department's PHI has been mitigated. Further, the Contractor shall report to the Department any security incident of which it becomes aware, subject to Section 11.6.5 of this Agreement. "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 for which reporting is required by this Section 11.6.1 of this Agreement.

11.6.2 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) Days from the date of discovery:

11.6.2a the date of the breach incident;

11.6.2b the date of the discovery of the breach;

10.6.2c a brief description of what happened;

11.6.2d a description of the types of unsecured PHI that were involved;

11.6.2e identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the breach;

11.6.2f 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

11.6.2g any other details necessary to complete an assessment of the risk of harm to the individual.

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

11.6.4 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.

11.6.5 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.

11.6.6 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.

11.7.0 Associate's Agents: The Contractor shall require all of its agents or Key Subcontractors 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, to 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 the Department's PHI under this Agreement.

- 11.8.0 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, 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. The Contractor must provide the Department with access to the Department'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 the Department'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, the Contractor must provide the Department with access to the requested PHI in a readable electronic form and format.
- 11.9.0 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 PHI into copies of such Department PHI maintained by the Contractor.
- 11.10.0 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.
- 11.11.0 Termination**
- 11.11.1** 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.
- 11.11.2 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.

11.12.0 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.

11.13.0 Miscellaneous:

11.13.1 Amendments: This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in writing duly signed by authorized representatives of the Parties and approved by the NYS AG and OSC. 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.

11.13.2 Survival: The respective rights and obligations of business associate and the "covered entities" identified herein under HIPAA and as set forth in this Article shall survive termination of this Agreement.

11.13.3 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.

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

ARTICLE XII: NOTICES

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

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

12.1.2 by facsimile transmission;

12.1.3 by personal delivery;

12.1.4 by expedited delivery service; or

12.1.5 by e-mail.

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

New York State Department of Civil Service

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

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

12.2.0 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.

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 XIII: NOTICE TO THE STATE

13.1.0 The Contractor shall immediately notify the State upon learning of any situation that can reasonably be expected to adversely affect the delivery of Services under the Agreement. If such notification is verbal, the Contractor shall submit to the State a written description of the situation and a recommendation for its resolution within seven (7) Business Days of learning of the situation. Notice shall be provided consistent with Appendix B, Section 9 of this Agreement.

ARTICLE XIV: SUSPENSION OF WORK

14.1.0 The Department reserves the right to suspend any or all activities under the Agreement, at any time, in the best interests of the State or the Department. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze on State spending, declaration of emergency, a change in legislation that eliminates the need for such services, or other such circumstances. Upon issuance of such notice, the Contractor shall comply with the suspension order. Activity may resume at such time as the Department issues a formal written notice authorizing a resumption of work.

ARTICLE XV: GENERAL PROVISION AS TO REMEDIES

15.1.0 The Parties may exercise their respective rights and remedies at any time, in any order, to any extent, and as often as deemed advisable, without regard to whether the exercise of one right or remedy precedes, concurs with or succeeds the exercise of another. A single or partial exercise of a remedy shall not preclude a further exercise of the right or remedy or the exercise of another right or remedy from time to time. No delay or omission in exercising a right or remedy, or delay, inaction, or waiver of any event of default, shall exhaust or impair the right or remedy or constitute a waiver of, or acquiescence to, an event otherwise constituting a breach or default under the Agreement.

15.2.0 In addition to any other remedies available to the Department under the Agreement, the Department has the following additional remedies which may include, but are not limited to, the following:

15.2.1 The right for the Department to withhold payment of some or all of the amounts due and owed under the Agreement until Contractor's performance is brought within the specified parameters.

15.2.2 The application of credits against amounts due and owed by the Department under the Agreement.

ARTICLE XVI: AUDIT AUTHORITY

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

16.1.0 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;

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

16.2.1 Review of the Contractor's activities and records relating to the documentation of its performance under this Agreement in areas such as Determination of Full-Time Employee status and Statutory IRS Reporting

16.2.2 Assessment of the Contractor's information, utilization and demographic systems to the extent necessary to verify accuracy of data on the reports provided to the Department and the federal government in accordance with PPACA

16.3.0 The Contractor shall maintain and make available documentary evidence necessary to perform such reviews. Documentation maintained and made available by the Contractor may include, but is not limited to, source documents, books of account, subsidiary records and supporting work papers, claim documentation, pertinent contracts, key subcontracts, Provider agreements, and correspondence.

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

16.5.0 The Contractor shall, at the Department's request, 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.

- 16.6.0** 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 procedures set forth in Appendix B of this Agreement.
- 16.7.0** 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 ten (10) Days after receipt of such audit report by the Contractor.
- 16.8.0** The audit provisions contained herein shall in no way be construed to limit the audit authority or audit scope of the Office of the NYS Comptroller 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 XVII: WARRANTIES

- 17.1.0** Where the Contractor generally offers additional or more advantageous warranties than set forth below, the Contractor shall offer or pass through any such warranties to the State. A breach of any provision of this Article shall be deemed a “material breach” for purposes of default under the Agreement. The Contractor hereby warrants and represents:
- 17.1.1** Representations and Warranties: That the Contractor assumes responsibility for the cost and timely accomplishment of all obligations and duties required by the Agreement whether or not the Contractor, or subcontractors, performs such obligations or duties. Program Services rendered by the Contractor shall be performed in accordance with all the terms and conditions, covenants, statements and representations contained in the Agreement, including all appendices.
- 17.1.2** Workmanship Warranty: That during the term of the Agreement, the Contractor will provide the necessary levels of qualified personnel to ensure proper performance by the Contractor of its obligations and responsibilities under the Agreement. The Contractor warrants that it performs Program Services using a professional and workmanlike manner, in accordance with highest applicable industry standards. For purposes of this Agreement, “highest applicable industry standards” shall be defined as the degree of care, skill, efficiency, and diligence that a prudent person possessing

expertise in the subject area and acting in a like capacity would exercise in similar circumstances.

17.1.3 Contractor Compliance: To pay, at its sole expense, all applicable permits, licenses, tariffs, tolls and fees and give all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Agreement. Prior to award and during the Agreement term and any extension thereof, the Contractor shall establish to the satisfaction of the Department that it meets or exceeds all requirements of the Agreement and any applicable laws, including but not limited to, permits, insurance coverage, licensing, proof of coverage for workman's compensation, and shall provide such proof as required by the Department. Failure to do so may constitute grounds for the Department to cancel or suspend the Agreement, in whole or in part, or to take any other action deemed necessary by the Department.

17.1.4 Survival of Warranties: All warranties contained in the Agreement shall survive the termination of the Agreement.

ARTICLE XVIII: TRANSITION AND TERMINATION OF CONTRACT

18.1.0 The State may require the Contractor to provide uninterrupted Program 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 Program Services ("Transition Period"). Transition Services, as defined below, shall be governed as follows:

18.1.1 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.

18.1.2 Transition Plan: The Contractor must, 90 Days prior to the end of this Agreement, or if this Agreement is terminated prior to the end of its term, within 15 Days of receipt 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 Program transition. The Contractor agrees to amend the Transition Plan to include all other information deemed necessary by the State.

- 18.1.3 Transition Services:** shall be deemed to include Contractor's responsibility for all tasks and Services outlined in the Contract, and for transferring in a planned manner specified in the Transition Plan all tasks and Services to the State, a third party or the successor contractor. It is expressly agreed between the Parties that the level of service during the transition period shall be maintained in accordance with and shall be subject to all the terms and conditions of the Contract, provided, however, that where, during the transition period, tasks or Services are transitioned to or assumed by the State, a third party or the successor contractor, Contractor shall not be held responsible for the negligent acts or negligent omissions of the State, a third party or the successor contractor or for service degradation resulting from the negligent acts or negligent omissions of the State, a third party or the successor contractor. 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.
- 18.1.4 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.
- 18.1.5 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.
- 18.1.6 Transition of Services:** Upon Termination of this Agreement, the Contractor shall promptly forward all employment data received prior to, or after the termination date to the successor contractor, or a third party designated by the Department, to conduct the Full-Time Employee Determination and Statutory IRS Reporting. The Contractor shall conduct Full-Time Employee Determination and Statutory IRS Reporting as described in this Agreement for all employment information received on or prior to

December 31, 2022 or the termination of the Agreement, if earlier. This will included all reporting requirements for the final tax year under the Contract.

18.1.7 Compensation for Transition Services: Contractor shall be reimbursed for transition services performed during the transition period at the rates set forth in this Agreement.

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

18.2.1 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 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 the Agreement for cause or to stop work immediately for unsatisfactory work, but is supplementary to that provision.

18.2.2 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 this Agreement for cause or may exercise such other remedies as shall be available under this Agreement, at law and/or equity.

18.2.3 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 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 shall be in writing.

18.2.4 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 shall have the right to take one or more of the following actions:

- 18.2.4a** Terminate the Agreement in whole or in part;
- 18.2.4b** Suspend, in whole or in part, payments due Contractor under the Agreement; and
- 18.2.4c** 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.

18.3.0 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 ten (10) Days written notification to the Contractor, or providing notice in accordance with other written notification terms in the Agreement.

18.4.0 For Violation of Section 5-a 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 the Office of Information Technology Services (OITS) 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.

18.5.0 Termination Notice: Notices required by this section shall be provided consistent with Appendix B, Section 9 of this Agreement.

18.6.0 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 XVIII: CONFIDENTIALITY

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

- 19.1.0** All records relating to the Agreement are confidential and shall be used by the Contractor solely for the purpose of carrying out its obligations under the Agreement, for measuring the performance of the Contractor in accordance with the performance guarantees set forth in Article VIII of this Agreement, and for providing the Department with material and information as may be specified elsewhere in this Agreement.
- 19.2.0** 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 Employee, 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.
- 19.3.0** 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 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 Employees.
- 19.4.0** The Contractor shall be responsible for assuring that any Agreement between the Contractor and any of its officers, employees, agents, consultants and/or Key Subcontractors or Affiliates contains a provision which strictly conforms to the various confidentiality provisions of this Agreement.
- 19.5.0** 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 XX: VENDOR RESPONSIBILITY

- 20.1.0** 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.
- 20.2.0** 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.
- 20.3.0** 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.
- 20.4.0** Termination (for Non-Responsibility): Upon written notice to the Contractor, a reasonable opportunity to be heard with the appropriate Department officials or staff, the 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 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.

(Remainder of this page has been left intentionally blank)

Contractor: _____

Contract Number: C000696

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

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 (s)he had authority to execute the above instrument; and that (s)he signed his/her name thereto.

NOTARY PUBLIC

My commission expires: _____

Approved as to form:
ATTORNEY GENERAL

Approved:
STATE COMPTROLLER

By: _____

By: _____

Date: _____

Date: _____