



Department of Civil Service

Request For Proposal #PPACA-2018-1

“Patient Protection and Affordable Care Act Compliance Services”

RELEASE DATE: April 13, 2018

PROPOSAL DUE DATE: May 18, 2018

IMPORTANT NOTICE: A Restricted Period under the Procurement Lobbying Law is currently in effect for this Procurement and it will remain in effect until State Comptroller approval of the resultant Contract. During the Restricted Period for this Procurement ALL communications must be directed, in writing, solely to the Department’ Procurement manager as listed below and shall be in compliance with the Procurement Lobbying Law and the NYS Department of Civil Service “*Rules Governing Conduct of Competitive Procurement Process*” (refer to Section II: Procurement Protocol and Process).

Department of Civil Service Contact for Inquiries and Submissions for this Solicitation:

PPACA Compliance Services Procurement Manager
Employee Benefits Division, Room 1106
New York State Department of Civil Service
Albany, New York 12239
(518) 402-0364
e-mail: PPACA2018RFP@cs.ny.gov

Lola Brabham
Acting Commissioner
NYS Department of Civil Service

James DeWan
Director
Employee Benefits Division
NYS Department of Civil Service

SECTION I: INTRODUCTION**A. Purpose**

The purpose of this Request for Proposals (RFP or Procurement), entitled “Patient Protection and Affordable Care Act (PPACA) Compliance Services” is to secure the services of a qualified organization (Offeror) to provide workforce analytics services and Statutory IRS Reporting as they pertain to the PPACA and Sections 6055 and 6056 of the Internal Revenue Code.

It is the Department of Civil Service’s (Department) intent to enter into a Contract (Agreement), subject to approval by the NYS Office of the Attorney General (OAG) and the NYS Office of the State Comptroller (OSC), with the Offeror selected as a result of this RFP for the period January 1, 2018 through June 30, 2023. Workforce analytics activities will be completed by December 31, 2022 and Statutory IRS Reporting requirements will be completed by June 30, 2023. The selected Offeror shall be responsible for providing services in accordance with the specifications in this RFP. The Offeror must agree to be bound by its Proposal which will be explicitly incorporated by reference into the executed Agreement. The Department will only contract with a single Offeror, which will be the sole contact with regard to all provisions of the Agreement. If the Offeror’s Proposal includes Key Subcontractors or Affiliates, the Offeror will be considered the Prime Contractor, and the Offeror shall assume full responsibility for the fulfillment of all of the responsibilities under the Agreement. The Department reserves the right to approve (or disapprove) any or all Key Subcontractors. This RFP and other relevant information may be reviewed at: <http://www.cs.ny.gov/PPACA2018RFP/index.cfm>.

Note: Refer to Section VIII: Glossary of Terms, for definitions of terms used throughout this RFP.

B. Overview of the New York State Health Insurance Program

The New York State Health Insurance Program (NYSHIP) was established by the New York State Legislature in 1957 to provide essential health insurance benefits to New York State (NYS) employees, retirees, and their eligible dependents. Public authorities, public benefit corporations, and other quasi-public entities, such as the NYS Thruway Authority and the Dormitory Authority may choose to participate in

NYSHIP; those that do are called Participating Employers (PEs). Article XI of the NYS Civil Service Law also allows local units of government such as school districts, special districts, and municipal corporations to participate in NYSHIP; those local government units which choose to participate in NYSHIP are called Participating Agencies (PAs). Under Article XI of the Civil Service Law, as amended, and 4 New York Code of Rules and Regulations (NYCRR) Part 73, as amended, the President, who also serves as the Commissioner of the Department, through the Department's Employee Benefits Division (EBD) is responsible for the ongoing administration of NYSHIP.

NYSHIP currently provides health insurance coverage through The Empire Plan and eight (8) Health Maintenance Organizations (HMOs), which is provided for under Civil Service Law. The Empire Plan is a Participating Provider Organization (PPO) with managed care components which became fully self-funded in 2014. Additionally, the Student Employee Health Plan (SEHP) is administered through The Empire Plan contracts. SEHP is a health insurance plan for graduate student employees of the New York State and New York City University systems. NYS Employees and Retirees may elect to enroll in either The Empire Plan or in HMOs offered through NYSHIP.

The State does not provide Form 1095-C or Form 1095-B to employees and retirees of PEs or PAs participating in NYSHIP. Each NYSHIP PE or PA is responsible for its own compliance efforts. The State also does not conduct a full-time eligibility determination for PE and PA employees. Providing these services on behalf of PEs and PAs is not contemplated under the contract to be awarded as a result of this procurement. The NYS-specific NYSHIP active membership is approximately 425,000 which includes Employees and their Dependents. The NYS-specific NYSHIP retiree membership is approximately 217,000 which includes Retirees and their Dependents. A more detailed breakdown of Enrollees and Dependents for each group can be found in **Exhibit II.F** of this RFP.

The State of New York generally offers health insurance benefits to employees who work at least half-time. More information about specific health insurance eligibility requirements for active State employees can be found in the General Information

Book for NY Active Employees at the following link: <https://www.cs.ny.gov/employee-benefits/nyship/shared/publications/general-information-book/2017/ny-gib-2017.pdf>

C. Overview of Required PPACA Compliance Services

The successful contractor must be able to perform two main duties to be included in the contract awarded as a result of this procurement. These duties include:

1. Workforce Analytics Services

Using payroll records, health insurance eligibility information, and other data provided by the State, the contractor must perform workforce analytics services for all State employees. This includes determining and reporting all employees' status under Section 4980H of the Internal Revenue Code (added to the IRC by the Patient Protection and Affordable Care Act). As defined by the statute, a full-time employee is an individual employed on average at least 30 hours of service per week. NYS will need to ensure it has made an offer of coverage to at least 95% of its full-time employee population otherwise it will face severe financial penalties under Section 4980H of the Internal Revenue Code.

2. Statutory IRS Reporting

To ensure PPACA compliance, the State of New York is required annually to provide Form 1095-C to applicable employees and retirees. The State also electronically transmits these files and Form 1094-C to the Internal Revenue Service. As part of this process, the State also includes information for approximately 12,200 State employees working at Cornell University when transmitting Form 1094-C to the IRS. However, Cornell University makes full-time determinations for these employees and provides copies of Form 1095-C to them as well. For calendar years 2015, 2016, and 2017, the State has utilized a contractor to ensure its compliance with these requirements. This RFP seeks to obtain the services of a contractor to provide similar services beginning in calendar year 2018. For calendar year 2015, the State provided Form 1095-C to 257,585 individuals and reported health insurance coverage for an additional 254,495 dependents. For calendar year 2016, the State provided Form 1095-C to 258,589 individuals and reported health insurance coverage for an additional 252,246 dependents.

The contractor must annually prepare, print, and distribute Form 1095-C to all required individuals by the due date established by the federal government. The contractor must also transmit this information, along with Form 1094-C, to the federal government by the required due date. All forms must be transmitted to employees and enrollees via paper copy. Electronic distribution of forms to employees and enrollees will not be permitted. The contractor must electronically transmit required information to the federal government. The State will have the right to review all forms prior to their distribution and will have the final signoff prior to transmission. The contractor must also identify and correct any errors identified in the forms at the State's discretion.

SECTION II: PROCUREMENT PROTOCOL AND PROCESS**A. Rules Governing Conduct of Competitive Procurement Process****1. Timeline/Key Events**

RFP Release Date	April 13, 2018
Exhibit I.K Offeror's Affirmation of Understanding & Agreement Due Date	See below*
Questions Due Date	April 27, 2018
Release Date of Official Responses to Questions	May 4, 2018
Exhibit I.J Notice of Bidding Intention Form Deadline	May 18, 2018
Proposals Due Date	May 18, 2018, 3:00 p.m. ET
Anticipated Contract Start Date	Upon OSC approval of the Agreement, "PPACA Compliance Services".

* Prior to the Offeror's initial contact with the Department, the Offeror must complete and submit **Exhibit I.K, "Procurement Lobbying Offeror's Affirmation of Understanding and Agreement"** to the PPACA Compliance Services Procurement Manager.

2. Procurement Lobbying Limitations

- a. Pursuant to State Finance Law Sections 139-j and 139-k, this Procurement imposes certain procurement lobbying limitations. Offerors are restricted from making contacts during the Procurement's "Restricted Period" (from the issuance of this RFP until the date of the Agreement's final approval by the OSC) to other than designated staff of the Department and the Executive Branch of New York State government, unless the contact falls within certain statutory exceptions ("permissible contacts"). For purposes of this Section II.A.2 of this RFP, "Offeror" includes prospective Offerors prior to the due date for the submission of offers/bids (i.e. Proposals) in response to this RFP. Staff is required to obtain certain information from Offerors and others whenever there is a contact about the Procurement during the Restricted Period, and is required to make a determination of the Offeror's responsibility that addresses the Offeror's compliance with the statutes' requirements. Findings of non-responsibility result in rejection for contract award, and if an Offeror is subject to two non-responsibility findings within four years the Offeror also will be determined ineligible to submit a Proposal on, or be awarded a Contract for four years from the date of the second non-responsibility finding. The Procuring Agencies' Policy and associated procedures are included as **Exhibit I.L, "Procurement Lobbying Policy: Restrictions on Contacts During the Procurement Process"** to this RFP. Further

information about these requirements can be found at:

<http://www.ogs.ny.gov/aboutOGS/regulations/defaultAdvisoryCouncil.html>

- b. In order to ensure public confidence and integrity in the Procurement process, the Department will strictly control all communications between any Offeror and participants in the evaluation process, from the date this RFP is released until the Agreement is approved by OSC. "Offeror" means any individual or entity, or any employee, agent, consultant, or person acting on behalf of such individual or entity, who contacts the Department or any other State governmental entity about a governmental procurement during that procurement's restricted period, whether or not the caller has a financial interest in the outcome of the governmental procurement; provided, however, that a governmental agency (or its employees) that communicates with the Department regarding a governmental procurement in the exercise of its oversight duties shall not be considered an Offeror. "Offeror" includes prospective Offerors prior to the due date for the submission of offers/bids in response to the solicitation document. All contacts, inquiries, questions, filings and submissions of Proposals in regard to this RFP must be directed, in writing, by mail, facsimile or e-mail, as applicable, solely to the PPACA Compliance Services Procurement Manager. An Offeror's failure to comply with this requirement may result in the Offeror's disqualification from this Procurement.

If using the U.S. Postal Service, please use the following address:

PPACA Compliance Services Procurement Manager
Employee Benefits Division, Room 1106
NYS Department of Civil Service
Albany, New York 12239

For all other carriers including couriers, UPS, and FedEx, please use the following address:

PPACA Compliance Services Procurement Manager
NYS Department of Civil Service
Employee Benefits Division
Agency Building 1
Empire State Plaza
Albany NY 12239
Fax: 518-402-2835
E-mail: PPACA2018RFP@cs.ny.gov

Additionally, Offerors and prospective Offerors are strictly prohibited from making any contacts or inquiries concerning the Procurement with any member, officer or employee of any NYS governmental entity other than the Department from the date this RFP is released

until the Agreement is approved by OSC subject only to the specific exceptions listed below. Further, any Offeror shall not attempt to influence the Procurement in any manner that would result in a violation or an attempted violation of Public Officers Law Sections 73(5) or 74.

- c. The following contacts are exempted from the provisions of paragraph 3 of Section 139-j and as such do not need to be directed to the PPACA Compliance Services Procurement Manager pursuant to Section 139-k:
- (1) The submission of written Proposals in response to this RFP;
 - (2) The submission of written questions by a method set forth in this RFP when all written questions and responses are to be distributed to all Offerors who have expressed an interest in the Procurement;
 - (3) Participation in a demonstration, conference or other means for exchange of information in a setting open to all potential bidders provided for in this RFP;
 - (4) Complaints by an Offeror regarding the failure of the PPACA Compliance Services Procurement Manager to respond to an Offeror's authorized contacts, when such complaints are made in writing to the Department's Office of the General Counsel, provided that any such written complaints shall become a part of the procurement record;
 - (5) Communications by a successful Offeror(s) who has been tentatively awarded a contract and is engaged in communications with the Department solely for the purpose of negotiating the terms of the Agreement after having been notified of tentative award;
 - (6) Contact by an Offeror to request the review of a procurement award when done in accordance with the procedure specified in the solicitation document;
 - (a) Contacts by an Offeror in protests, appeals or other review proceedings (including the apparent successful Offeror and its representatives) before the Department seeking a final administrative determination, or in a subsequent judicial proceeding;
or

- (b) Complaints of alleged improper conduct in the Procurement when such complaints are made to the NYS Attorney General, Inspector General, District Attorney, or to a court of competent jurisdiction; or
 - (c) Written protests, appeals or complaints to the NYS Comptroller's office during the process of contract approval, where the NYS Comptroller's approval is required provided that the NYS Comptroller shall make a record of such communications and any response thereto which shall be entered into the procurement record pursuant to State Finance Law Section 163; or
 - (d) Complaints of alleged improper conduct in a governmental procurement conducted by a municipal agency or local legislative body to the NYS Comptroller's office; and
- (7) Communications between Offerors and governmental entities that solely address the determination of responsibility by a governmental entity of an Offeror.
- d. It is ***mandatory*** that all prospective Offerors/Offerors complete Part 1 of **Exhibit I.K, "Procurement Lobbying Offeror's Affirmation of Understanding and Agreement"** affirming their understanding of, and agreement to, comply with the procurement lobbying requirements set forth in State Finance Law Sections 139-k and 139-j. A completed **Exhibit I.K** must be submitted to the PPACA Compliance Services Procurement Manager prior to a prospective Offeror making its initial contact with the Department (e.g., attendance at the Pre-Proposal Conference, submission of **Exhibit I.J, "Notice of Bidding Intention Form,"** submission of questions, etc. or concurrent with an Offeror's submission of its Proposal, whichever shall occur first). Offerors are advised that whenever any of the Offeror's officers, employees, agents or consultants contact the Department, they should be prepared to provide their name, address, telephone number, place of principal employment, occupation, and whether they were retained, employed or designated, by or on behalf of the Offeror to appear before or contact the Department in regards to this Procurement. To that end and to streamline the process, Offerors are requested to complete and submit Part 2 of **Exhibit I.K** entitled, **"Designated Offeror Contact"** for each officer, employee, agent or consultant authorized by the Offeror to appear before or contact the Department in regards to this Procurement before appearing or before or at the time such contact is initiated.

Additionally, at the time a Proposal is submitted to the Department, the Offeror is required to provide a completed **"Offeror's Certification of Compliance Pursuant to State**

Finance Law Section 139-k” form. This certification is included as **Exhibit I.P** of this RFP.

3. Pre-Proposal Conference

There will be no Pre-Proposal Conference held for this RFP.

4. Notice of Bidding Intention Form

Filing of this notice is **not** mandatory; however, to assist the Department in better managing the procurement process, prospective Offerors, whether they intend to submit a Proposal in response to this RFP or not, are requested to complete a “**Notice of Bidding Intention Form**” (**Exhibit I.J**) and submit it to the PPACA Compliance Services Procurement Manager by the Notice of Bidding Intention Deadline as set forth in Section II.A.1. The completed form may be submitted either in hardcopy, at the address provided in Section II.A.2.b. or electronically at: PPACA2018RFP@cs.ny.gov

On the “**Notice of Bidding Intention Form**,” New York State certified Minority and Women-Owned Businesses (M/WBE) may request that their firm’s contact information be included on a list of M/WBE firms interested in serving as a subcontractor for this Procurement. The listing will be publicly posted on the Procurement webpage at:

www.cs.ny.gov/PPACA2018RFP/index.cfm for reference by the bidding community. A firm requesting inclusion on this list should send a copy of its NYS M/WBE certification with its completed “**Notice of Bidding Intention Form**.”

5. Submission of Errors or Omissions in this RFP Document

By participating in activities related to this Procurement, and/or by submitting a Proposal in response to this RFP, prospective Offerors agree to be bound by its terms, including, but not limited to, this process by which a prospective Offeror may submit errors or omissions for consideration. In the event that a prospective Offeror believes there is an error or omission in this RFP, the prospective Offeror may raise such issue according to the following provisions:

a. Process for Submitting Assertions of Errors or Omissions in RFP Document

- (1) **Time Frame:** Assertions of errors or omissions in the Procurement process which are or should have been apparent prior to the Proposal Due Date must be received by the Department, in writing, five (5) Business Days after the Release Date of Official Responses to Questions specified in Section II.A.1.

- (2) **Content:** The submission alleging the error or omission must clearly and fully state the legal and/or factual grounds for the assertion and must include all relevant documentation.
- (3) **Format of Submission:** All submissions asserting an error or omission must be in writing and submitted to the PPACA Compliance Services Procurement Manager in the following manner.

If using the U.S. Postal Service, please use the following address:

PPACA Compliance Services Procurement Manager
Employee Benefits Division, Room 1106
NYS Department of Civil Service
Albany, New York 12239

For all other carriers including couriers, UPS, and FedEx please use the following address:

PPACA Compliance Services Procurement Manager
NYS Department of Civil Service
Employee Benefits Division
Agency Building 1
Empire State Plaza
Albany NY 12239

The envelope or package must clearly and prominently display the following statement:

**"Submission of Errors or Omissions for the
PPACA Compliance Services
Request for Proposals #PPACA-2018-1"**

Any assertion of an error or omission which does not conform to the requirements set forth in this section shall be deemed waived by the prospective Offeror and the prospective Offeror shall have no further recourse.

b. The Review Process for Assertions of Errors or Omissions in RFP Document

The Department shall conduct the review process for submission of errors or omissions. The Commissioner may appoint a designee who will review the submission and make a recommendation to the Commissioner as to the disposition of the matter. The Commissioner's designee may be an employee of the Department but, in any event, shall be someone who has not participated in the preparation of this RFP, the evaluation of Proposals, or the selection decision. At the discretion of the Commissioner, or the Commissioner's designee, the prospective Offeror may be given the opportunity to meet with the Commissioner or the Commissioner's designee, as the case may be, to support its submission. The prospective Offeror may, but need not, be represented by counsel at such

a meeting. Any and all issues concerning the manner in which the review process is conducted shall be determined solely by the Commissioner or the Commissioner's designee.

The Commissioner, or the Commissioner's designee, shall review the matter, and the Commissioner shall issue a written decision within twenty (20) business days after the close of the review process. If additional time for the issuance of the decision is necessary, the prospective Offeror shall be advised of the delay and of the time frame within which a decision may be reasonably expected. The Commissioner's decision will be communicated to the party in writing and shall constitute the agency's final determination in the matter.

The Department reserves the right to determine and to act in the best interests of the State in resolving any assertion of error or omission in this RFP document. As a consequence of reviewing the assertion, the Department may elect to extend the Proposal Due Date as may be appropriate. Notice of any such extension will be provided to all organizations who registered via mail, facsimile or e-mail. Notice of any extension will also be posted to: www.cs.ny.gov/PPACA2018RFP/index.cfm

6. Submission of Questions

In the event a prospective Offeror has any substantive or procedural questions concerning the content of this RFP document, those questions can be submitted in the following manner.

If using the U.S. Postal Service, please use the following address:

PPACA Compliance Services Procurement Manager
Employee Benefits Division, Room 1106
NYS Department of Civil Service
Albany, New York 12239

For all other carriers including couriers, UPS, and FedEx, please use the following address:

PPACA Compliance Services Procurement Manager
NYS Department of Civil Service
Employee Benefits Division
Agency Building 1
Empire State Plaza
Albany NY 12239

Prospective Offerors may submit questions to the PPACA Compliance Services Procurement Manager, in writing, via e-mail, facsimile or mail. The Department strongly urges prospective Offerors to submit the questions via e-mail. Each question should cite the particular RFP section, page number and paragraph number to which it refers. All responses will be

considered unofficial until issued or confirmed in writing by the Department on the procurement website. Only those questions due prior to 5:00 p.m. Eastern Time (ET), on the Questions Due Date as shown in Section II.A.1. of this RFP, will be accepted.

To expedite its responses, the Department has provided a question template form which prospective Offerors are requested to use in submitting questions regarding this RFP (see **Exhibit I.R, “Question Template”**).

After the Questions Due Date, the Department will provide to all organizations who have registered, e-mail notification of the posting of all questions received and the Department’s Official Responses to said questions. The aforementioned information will be posted to: www.cs.ny.gov/PPACA2018RFP/index.cfm and all registered prospective Offerors will be notified of the posting to this site.

7. Submission of Proposal

a. Submission Requirements

The Offeror’s Proposal must be organized and separated into three (3) separate parts: Administrative Proposal; Technical Proposal, and Cost Proposal. To facilitate the evaluation process, Offerors must submit twelve (12) separately bound hard copies (two (2) ORIGINALS and ten (10) copies) and one (1) electronic copy (CD) of each of the three (3) parts of the Offeror’s Proposal. Electronic submissions must be in Adobe Acrobat, as applicable. These thirty-six (36) documents and three (3) CDs are collectively hereafter referred to as “Submissions.”

Each ORIGINAL hard copy of each part must be marked "ORIGINAL," contain original signatures of an official(s) authorized to bind the Offeror to its provisions on all forms submitted that require the Offeror’s signature and should be numbered sequentially, i.e. Original #1, Original #2. The remaining ten (10) hard copies of each section may contain a copy of the official's signature and should be numbered sequentially (e.g. Copy #1, Copy #2, etc.). Please note that, for each of the three (3) sections, that hard copy marked “Original #1” will be deemed controlling by the Department when viewing the Proposal.

Proposals should be placed and packaged in sealed boxes/envelopes. Each sealed box/envelope should contain a label on the outside which contains the information below.

<p style="text-align: center;">New York State Department of Civil Service Request for Proposals #PPACA-2018-1 <u>“PPACA Compliance Services”</u></p> <p style="text-align: center;">OFFEROR NAME OFFEROR ADDRESS</p> <p style="text-align: center;">Indicate content, as applicable ADMINISTRATIVE, TECHNICAL or COST PROPOSAL There must be no cost information included in the Offeror’s Administrative Proposal or Technical Proposal.</p>

All Proposals must be sent to the following:

If using the U.S. Postal Service, please use the following address:

PPACA Compliance Services Procurement Manager
Employee Benefits Division, Room 1106
NYS Department of Civil Service
Albany, New York 12239

For all other carriers including couriers, UPS and FedEx please use the following address:

PPACA Compliance Services Procurement Manager
NYS Department of Civil Service
Employee Benefits Division
Agency Building 1
Empire State Plaza
Albany NY 12239

For those Offerors who plan to have the Proposal hand delivered, arrangements for acceptance of the packages must be made in accordance with procurement security procedures. **To make such arrangements, the Department requests that the Offeror notify the PPACA Compliance Services Procurement Manager forty-eight (48) hours prior to delivery. All Proposals must be received by 3:00 p.m. ET on the Proposal Due Date as set forth in Section II.A.1 of the RFP.** If the Proposal is delivered by mail or courier, the Department recommends that it be sent "return receipt requested," so the Offeror obtains proof of timely delivery.

All Proposals submitted become the property of the Department. Any proposal received after 3:00 p.m. ET on the Proposal Due Date will not be accepted by the Department and may be returned to the submitting entity at the Department’s discretion.

The Department will accept amendments and/or additions to an Offeror's Proposal if the amendment and/or addition is received by the Department **prior** to 3:00 p.m. ET on the Proposal Due Date. All amendments to an Offeror's Proposal must be submitted in writing, in accordance with the format set forth in Section II.A.6. of this RFP, and will be included as part of the Offeror's Proposal, if accepted by the Department as provided above.

Offerors are cautioned to verify the content of their Proposal before submission. Except for material received from an Offeror in response to a request by the Department, the Department will not accept amendments or additions to a Proposal if such material is received after 3:00 p.m. ET on the Proposal Due Date. Offerors are encouraged to submit the "**Proposal Submission Checklist**" (**Exhibit I.A**) to facilitate verification of Proposal contents. An Offeror's request to withdraw a Proposal after the Proposal Due Date may be considered at the sole discretion of the Department.

b. Formatting Requirements

The Administrative Proposal, Technical Proposal and Cost Proposal each should comply with the following formatting requirements (Failure to comply with the formatting requirements herein below may, but will not necessarily, result in the Proposal being deemed non-responsive and may, but will not necessarily, result in rejection of the Proposal):

- (1) ***Binding of Proposal:*** The Administrative and Technical Proposal must be separate, clearly labeled, and bound as one complete package. The Cost Proposal is required to be separately bound from the Administrative and Technical Proposals, or submitted in a separate sealed envelope, clearly labeled. The official name of the organization(s), the Proposal Due Date and "PPACA Compliance Services RFP #PPACA-2018-1" must appear on the outside front cover of each copy of the package containing the Offeror's Administrative, Technical, and Cost Proposals. If the Proposals are submitted in loose-leaf binders, the official name(s) of the organization(s) and "PPACA Compliance Services RFP #PPACA-2018-1" also must appear on the spine of the binders;

- (2) **Table of Contents:** Each Proposal must include a table of contents;
- (3) **Index Tabs:** Each major Section of the Proposal, each subsection in the Technical Proposal and each Exhibit must be labeled with an index tab that completely identifies the title of the Section, subsection or Exhibit as named in the table of contents;
- (4) **Pagination:** Each page of the Proposal, including Exhibits, must be labeled on the upper right with the Section title and Section reference, page number, and date. Pages within each Section and Exhibit must be numbered consecutively;
- (5) **Proposal Updates/Corrections:** Each Offeror must submit its Proposal so that any update pages required by the Department can be easily incorporated into the Proposal. Should it be necessary for an Offeror to submit additional information in support of its Proposal, it must be submitted in accordance with the following: upon written notification by the Offeror and agreement by the Department, new or replacement pages may be placed in the Proposal. All new or replacement pages will show the date of the revision and indicate the portion of the page being changed. This latter requirement will be fulfilled by drawing vertical lines down both margins of all affected passages. All new/ replacement pages will be noted by the Department on the errata sheet to be placed at the front of the Proposal copy; and,
- (6) **Required Content of Proposals:** The Proposal must consist of three parts: 1) the Administrative Proposal, which must respond to the requirements set forth in Section III of this RFP; 2) the Technical Proposal, which must respond to the requirements set forth in Section IV of this RFP; and 3) the Cost Proposal, which must respond to the requirements set forth in Section V of this RFP.

c. Extraneous Terms

A proposal must conform to the terms set forth in this RFP. Extraneous terms or material deviations may render the proposal non-responsive and may result in the rejection of the proposal. An extraneous term is considered by the State only if such term constitutes a non-material deviation from the RFP requirements. New York State will not entertain any deviations to Appendix A, Standard Clauses for New York State Contracts. New York State will not entertain any deviations to Appendix B (Standard Clauses for all DCS Contracts) that are material and substantive in nature.

In general, a material deviation (including additional, inconsistent, conflicting or alternative term) is one that would: (i) impair the interest of New York State; (ii) place the Offeror in a position of unfair economic advantage; (iii) place other offerors at a competitive disadvantage; or (iv) which, if had been included in the RFP, would have formed a reasonable basis for an otherwise qualified offeror to change its determination about submitted a proposal.

To be considered by the State, an extraneous term must:

- A. Be set forth in Exhibit I.X, Extraneous Terms template (template);
- B. Include all the detail requested in template and shall not include any pre-printed literature or vendor forms;
- C. Identify by par, section and title the specific RFP requirement (if any) that is proposed for modification; and
- D. Detail its proposed extraneous term, including specific language, and the reason for the request.

If an extraneous term does not meet the requirements in A-D, it shall not be considered by the State and immediately rejected.

Extraneous Term(s) submitted on standard, pre-printed forms (including, but not limited to, product literature, order forms, manufacturer's license agreements, standard contracts or other pre-printed documents), which are physically attached or summarily referenced in the Proposal, shall not be considered as having been submitted with or intended to be incorporated as part of the offer, but shall be deemed included by the Offeror for information or promotional purposes only.

8. Notification of Award

A proposed award notification letter will be sent to the selected Offeror indicating a conditional award subject to successful contract negotiations. The remaining Offerors will be notified of the conditional award and the possibility that failed negotiations could result in an alternative award. No public discussion or news releases relating to this RFP, the associated Procurement process, including but not limited to the bid solicitation, proposal evaluation and award and contract negotiation processes or the Agreement shall be made by any Offeror or their agent without the prior written approval of the Department.

9. Debriefing

As stated in Section II.A.8 of this RFP, proposed award notification letters will be sent to the selected and non-selected Offerors. At that time, Offerors will be advised of the opportunity to request a Debriefing and the timeframe by which such requests must be made, dependent upon the nature of the Debriefing, i.e., pre-award or post-award. Debriefings are subject to the Department's Debriefing Guidelines which are set forth in **Exhibit I.H.** entitled, "**NYS Department of Civil Service Debriefing Guidelines.**" An unsuccessful Offeror's written request for a debriefing shall be submitted in the following manner.

If using the U.S. Postal Service, please use the following address:

PPACA Compliance Services Procurement Manager
Employee Benefits Division, Room 1106
NYS Department of Civil Service
Albany, New York 12239

For all other carriers including couriers, UPS, and FedEx, please use the following address:

PPACA Compliance Services Procurement Manager
NYS Department of Civil Service
Employee Benefits Division
Agency Building 1
Empire State Plaza
Albany NY 12239

10. Submission of Award Protests

By participating in activities related to this Procurement, and/or by submitting a Proposal in response to this RFP, an Offeror agrees to be bound by its terms including, but not limited to, the process by which an Offeror may submit protests of the selection award for consideration. In the event that an Offeror decides to protest the selection decision, the Offeror may raise such issue according to the following provisions.

a. Process for Submitting Post Award Protests of the Selection Decision

- (1) **Time Frame:** Any protest of the selection decision must be received no later than ten (10) Business Days after an Offeror's receipt of written notification by the Department of a conditional award.
- (2) **Content:** The protest must fully state the legal and factual grounds for the protest and must include all relevant documentation.

- (3) **Format of Submission:** The protest must be in writing and submitted to the PPACA Compliance Services Procurement Manager in the following manner.

If using the U.S. Postal Service, please use the following address:

PPACA Compliance Services Procurement Manager
Employee Benefits Division, Room 1106
NYS Department of Civil Service
Albany, New York 12239

For all other carriers including couriers, UPS, and FedEx, please use the following address:

PPACA Compliance Services Procurement Manager
NYS Department of Civil Service
Employee Benefits Division
Agency Building 1
Empire State Plaza
Albany NY 12239

A protest of the selection decision must have the following statement clearly and prominently displayed on the envelope or package:

**“Submission of Selection Protest for PPACA
Compliance Services RFP #PPACA-2018-1”**

b. Process for Submitting Non-Responsive Determination Protest

- (1) **Time Frame:** Any protest of a non-responsive determination must be received no later than ten (10) Business Days after an Offeror's receipt of written notification by the Department of the non-responsive determination.
- (2) **Content:** The protest must fully state the legal and factual grounds for the protest and must include all relevant documentation.
- (3) **Format of Submission:** All protest must be in writing and submitted to the PPACA Compliance Services Procurement Manager in the following manner.

If using the U.S. Postal Service, please use the following address:

PPACA Compliance Services Procurement Manager
Employee Benefits Division, Room 1106
NYS Department of Civil Service
Albany, New York 12239

For all other carriers including couriers, UPS, and FedEx, please use the following address:

PPACA Compliance Services Procurement Manager
NYS Department of Civil Service
Employee Benefits Division
Agency Building 1
Empire State Plaza
Albany NY 12239

A protest of the non-responsive determination must have the following statement clearly and prominently displayed on the envelope or package:

**“Submission of Non-Responsive Determination Protest for
PPACA Compliance Services RFP #PPACA-2018-1”**

Any assertion of protest which does not conform to the requirements set forth in this section shall be deemed waived by the Offeror, and the Offeror shall have no further recourse.

c. Review of Submitted Protests

The Department shall conduct the review process of submitted protests. The Department's Commissioner may appoint a designee to review the submission and to make a recommendation to the Commissioner as to the disposition of the matter. The Commissioner's designee may be an employee of the Department but, in any event, shall be someone who has not participated in the preparation of this RFP, the evaluation of Proposals, the non-responsive determination, or the selection decision or the non-responsive determination. At the discretion of the Commissioner, or the Commissioner's designee, the Offeror may be given the opportunity to meet with the Commissioner or her designee, as the case may be, to support its submission. The Offeror may, but need not, be represented by counsel at such a meeting. The Department shall be represented by counsel at such meeting. Any and all issues concerning the manner in which the review process is conducted shall be determined solely by the Commissioner, or the Commissioner's designee. The Commissioner, or the Commissioner's designee, shall review the matter, and shall issue a written decision within twenty (20) business days after the close of the review process. If additional time is necessary for the issuance of the decision, the Offeror shall be advised of the time frame within which a decision may be reasonably expected. The Commissioner's decision will be communicated to the party in writing and shall constitute the Department's final determination in the matter.

In the event that an Offeror protests the selection decision or the non-responsive determination, the Department shall continue contract negotiations regarding the terms and conditions of the agreement with the selected Offeror.

The Department reserves the right to determine and to act in the best interests of the State in resolving any selection or non-responsive determination protest.

11. Department of Civil Service Reservation of Rights

In addition to any rights articulated elsewhere in this RFP, the Department reserves the right to:

- a. Make or not make an award under the RFP, either in whole or in part.
- b. Prior to the bid opening, amend the RFP. If the Department elects to amend any part of this RFP, notification of the amendment will be provided to all prospective Offerors who submitted a “**Procurement Registration Form**” and/or a “**Procurement Lobbying Offeror’s Affirmation of Understanding and Agreement**” (Exhibit I.K.) via e-mail, facsimile or mail. Any amendments will also be posted to:
www.cs.ny.gov/PPACA2018RFP/index.cfm
- c. Prior to the bid opening, direct Offerors to submit Proposal modifications addressing subsequent RFP amendments;
- d. Withdraw this RFP, at any time, in whole or in part, at the Department’s sole discretion, prior to OSC approval of award of the contract.
- e. Waive any requirements that are not material;
- f. Disqualify any Offeror whose conduct and/or Proposal fails to conform to any of the mandatory requirements of this RFP;
- g. Require clarification at any time during the Procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an Offeror’s Proposal and/or to determine an Offeror’s compliance with the requirements of this RFP;
- h. Reject any or all Proposals received in response to this RFP, at its sole discretion;

- i. Change any of the scheduled dates stated in this RFP;
- j. Seek clarifications and revisions of Proposals;
- k. Establish programmatic and legal requirements to meet the Department's needs, and to modify, correct, and/or clarify such requirements at any time during the Procurement, provided that any such modifications would not materially benefit or disadvantage any particular Offeror;
- l. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the Offerors;
- m. For the purposes of ensuring completeness and comparability of the Proposals, analyze submissions and make adjustments or normalize submissions in the Proposal(s), including the Offeror's technical assumptions, and underlying calculations and assumptions used to support the Offeror's computation of costs, or to apply such other methods it deems necessary to make level comparisons across Proposals;
- n. Use the Proposal, information obtained through any site visits, management interviews, and the Department's own investigation of an Offeror's qualifications, experience, ability or financial standing, and any other material or information submitted by the Offeror in response to the Department's request for clarifying information, if any, in the course of evaluation and selection under this RFP;
- o. Negotiate with the successful Offeror within the scope of this RFP in the best interests of the Department;
- p. Utilize any and all ideas submitted in the Proposal(s) received;
- q. Conduct contract negotiations with the next responsible bidder, should the Department be unsuccessful in negotiating with the selected Offeror; and
- r. Unless otherwise specified in this RFP, every offer is firm and not revocable for a minimum period of three hundred sixty- five (365) days from the Proposal Due Date as set forth in the RFP.
- s. Any Offeror whose Proposal might become eligible for a conditional award in the event that the intended selection is disqualified may be asked to extend the time for which their

Proposal shall remain valid.

12. Limitation of Liability

The Department is not liable for any cost incurred by any Offeror prior to approval of the Agreement by OSC. Additionally, no cost will be incurred by the Department for any prospective Offeror or Offeror's participation in any Procurement related activities. The Department has taken care in preparing the data accompanying this RFP (hard copy exhibits, website exhibits, and sample document exhibits). However, the Department does not warrant the accuracy of the data; the numbers or statistics which appear in hardcopy exhibits, website exhibits, and sample document exhibits referenced throughout this RFP which are for informational purposes only and should not be used or viewed by prospective Offerors as guarantees or representations of any levels of past or future performance or participation. Accordingly, prospective Offerors should rely upon and use such numbers or statistics in preparing their Proposals at their own discretion.

B. Compliance with Applicable Rules, Laws, Regulations, and Executive Orders

This Procurement is being conducted in accordance with, and is subject to, the competitive bidding laws of the State of New York (New York State Finance Law, Article 11) and it is governed by, at a minimum, the legal authorities referenced below. All Offerors must fully comply with the provisions and set forth in this Section II.B. of this RFP. The Department will consider for evaluation and selection purposes only those Offerors who agree to comply with these provisions whose Proposal contains the Statements, Formal Certifications, and Exhibits submissions required.

1. Public Officers Law

All Offerors and Offerors' employees and agents must be aware of and comply with the requirements of the New York State Public Officers Law ("POL"), particularly POL Sections 73 and 74, as well as all other provisions of New York State law, rules and regulations, and policy establishing ethical standards for current and former State employees. In signing its Proposal, each Offeror guarantees knowledge and full compliance with such provisions for purposes of this RFP and any other activities including, but not limited to, contracts, bids, offers, and negotiations. Failure to comply with these provisions may result in disqualification from the Procurement process, termination, suspension or cancellation of the Agreement and criminal proceedings as may be required by law. Per Section III.C of this RFP, Offerors must submit an affirmative statement as to the existence of, absence of, or potential for conflict of interest on

the part of the Offeror because of prior, current, or proposed contracts, engagements, or affiliations, by submitting a completed **Exhibit I.M, “Compliance with Public Offers Law Requirement”** in the Offeror’s Administrative Proposal.

2. Omnibus Procurement Act of 1994 and its 2000 Amendment

Offerors are hereby notified that, if their principal place of business is located in a foreign or domestic jurisdiction that penalizes New York State vendors, and if the goods or services they offer would be produced or performed substantially outside New York State, the Omnibus Procurement Act of 1994 and its 2000 amendments require that they be denied contracts which they otherwise could obtain. The list of jurisdictions subject to this provision is set forth in Article 20 of Appendix A.

3. Contractor Requirements and Procedures for business participation opportunities for New York State Certified Minority-and-Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women

NEW YORK STATE LAW

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations the Department is required to promote opportunities for the maximum feasible participation of New York State-certified Minority and Women-owned Business Enterprises (“MWBEs”) and the employment of minority group members and women in the performance of the Department contracts.

Business Participation Opportunities for MWBEs

For purposes of this solicitation, the Department hereby establishes an overall goal of 16.00 percent for MWBE participation, 8 percent for New York State-certified Minority-owned Business Enterprise (“MBE”) participation and 8 percent for New York State-certified Women-owned Business Enterprise (“WBE”) participation (based on the current availability of MBEs and WBEs). A contractor (“Contractor”) on any contract resulting from this procurement (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the respondent agrees that the Department may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at:

<https://ny.newnycontracts.com>. For guidance on how the Department will evaluate a Contractor's "good faith efforts," refer to 5 NYCRR Section 142.8.

The respondent understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract.

In accordance with 5 NYCRR Section 142.13, the respondent further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this RFP, such finding constitutes a breach of contract and the Department may withhold payment as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a respondent agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System ("NYSCS"), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a respondent may arrange to provide such evidence via a non-electronic method by contacting the PPACA Compliance Services Procurement Manager.

Additionally, a respondent will be required to submit the following documents and information as evidence of compliance with the foregoing:

- A. An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to the Department for review and approval. (Exhibit I.O)

The Department will review the submitted MWBE Utilization Plan and advise the respondent of the Department's acceptance or issue a notice of deficiency within 30 days of receipt

- B. If a notice of deficiency is issued, the respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to the Department via the address outlined previously in section II.A.2.b of this document, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the Department to be inadequate, the Department shall notify the respondent and direct the respondent to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

The Department may disqualify a respondent as being non-responsive under the following circumstances:

- a. If a respondent fails to submit an MWBE Utilization Plan;
- b. If a respondent fails to submit a written remedy to a notice of deficiency;
- c. If a respondent fails to submit a request for waiver; or
- d. If the Department determines that the respondent has failed to document good faith efforts.

The successful respondent will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to the Department, but must be made no later than prior to the submission of a request for final payment on the Contract.

The successful respondent will be required to submit a quarterly M/WBE Contractor Compliance & Payment Report to the Department, by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”),

thereby further integrating such businesses into New York State's economy. The Department recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of the Departments' contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders/Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, the Department conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at:

<http://ogs.ny.gov/Core/SDVOBA.asp>

Bidder/Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract.

Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the respondent agrees with all of the terms and conditions of Appendix A – Standard Clauses for All New York State Contracts including Clause 12 - Equal Employment Opportunities for Minorities and Women OR Authority equivalent to Appendix A. The respondent is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the respondent, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff,

termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The respondent will be required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement, Appendix D-1, to the Department with its bid or proposal.

If awarded a Contract, respondent shall submit a Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by the Department on a **quarterly** basis during the term of the Contract.

Pursuant to Executive Order #162, contractors and subcontractors will also be required to report the gross wages paid to each of their employees for the work performed by such employees on the contract utilizing the Workforce Utilization Report on a quarterly basis.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and subcontractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

4. Americans with Disabilities Act

The Contractor will be required to assure its compliance with the Americans with Disabilities Act (42 USC Section 12101 et. seq.), in that any services and programs provided during the course of performance of the Agreement shall be accessible under Title II of the Americans with Disabilities Act, and as otherwise may be required under the Americans with Disabilities Act by submitting a completed "**Compliance with Americans with Disabilities Act**" form, **Exhibit I.N** in the Offeror's Administrative Proposal.

5. MacBride Fair Employment Principles Act & Non-Collusive Bidding Certification

In accordance with Chapter 807 of the Laws of 1992, Offerors must certify whether they or any individual or legal entity in which the Offeror holds a ten percent (10%) or greater ownership interest, or any individual or legal entity that holds a ten percent (10%) or greater ownership in the Offeror have business operations in Northern Ireland. If an Offeror does have business operations in Northern Ireland, they must certify that they are taking lawful steps in good faith to conduct such business operations in accordance with the MacBride Fair Employment Opportunity Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of their compliance with such principles.

The Department also requires that Offerors certify that prices in their Proposal have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition with any other Offeror or competitor. In addition, that unless required by law, the prices quoted in the Offeror's Proposal have not been knowingly disclosed by the Offeror and will not knowingly be disclosed by the Offeror prior to opening, directly, indirectly, to any other Offeror or to any competitor. Offerors must also certify that no attempt has been made or will be made by the Offeror to induce any person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition. An executed copy of the combined "**MacBride Act Statement Form**" and "**Non-Collusive Bidding Certification,**" **Exhibit I.D** is required to be submitted in the Offeror's Administrative Proposal.

6. Vendor Responsibility Requirements – State Finance Law Section 163

New York State Finance Law Section 163 requires contracts for services and commodities be awarded on the basis of lowest price or best value "to a responsive and responsible Offeror." Furthermore, Section 163(9)f requires the Department to make a determination of responsibility of the proposed Contractor prior to making an award.

To assist the Department in evaluating the responsibility of Offerors, a completed "**New York State Standard Vendor Responsibility Questionnaire**" must be submitted in the Offeror's Administrative Proposal. A person legally authorized to represent the Offeror must execute the questionnaire. To the extent that the Contractor is proposing the use of Key Subcontractors or Affiliates (i.e., part of the Offeror's proposed Account Team) and expected to receive more than \$100,000 in payments during the term of the Agreement, the Offeror must submit a completed

“New York State Standard Vendor Responsibility Questionnaire” for each Key Subcontractor or Affiliate completed by a person legally authorized to represent the Key Subcontractor or Affiliate.

The Department recommends that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System; however, vendors may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at:

http://www.osc.state.ny.us/vendrep/vendor_index.htm or go directly to the VendRep System online at: <https://portal.osc.state.ny.us>.

Vendors must provide their New York State Vendor Identification Number when enrolling. To request assignment of a Vendor ID or for VendRep System assistance, contact the Office of the State Comptroller's Help Desk at 866-370-4672 or 518-408-4672 or by email at: itservicedesk@osc.state.ny.us.

Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep or may contact the Office of the State Comptroller's Help Desk for a copy of the paper form.

7. Tax Law Section 5-a Certification Regarding Sales and Compensating Use Taxes

Section 5-a of the New York Tax Law requires that any contract valued at more than \$100,000 entered into by a State agency shall not be valid, effective, or binding against the agency unless the Contractor certifies to the Tax Department that it is registered to collect New York State and local sales and compensating use taxes, if the Contractor made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specified period. In addition, the Contractor must certify to the Tax Department that each affiliate and subcontractor of such Contractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. For the purpose of this requirement, “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. The Contractor also must certify to the procuring state entity that it filed the certification with the Tax Department and that the certification is correct and complete. Accordingly, in the event the value of the

Agreement exceeds \$100,000, the Contractor must file a properly completed “**Form ST-220-CA,**” **Exhibit I.E** with the Department and a properly completed “**Form ST-220-TD,**” **Exhibit I.F** with the Department of Taxation & Finance before the Agreement may take effect. In addition, after the Agreement has taken effect, the Contractor must file a properly completed “**Form ST-220-CA**” with the Department if the Agreement’s term is renewed. Further, a new “**Form ST-220-TD**” must be filed with the Department of Taxation & Finance if no “**Form ST-220-TD**” has been filed by the Contractor or if a previously filed “**Form ST-220-TD**” is no longer correct and complete.

Submission of these forms (“**ST-220-CA**” and “**ST-220-TD**”) is **NOT** required at time of Proposal submission however, the selected Offeror will be required to complete and submit these forms as a condition of contract award. These forms may also be found at:

http://www.tax.ny.gov/forms/sales_cur_forms.htm

8. Consultant Disclosure Requirements

Chapter 10 of the Laws of 2006 requires State contractors to disclose, by employment category, the number of persons employed to provide services under a contract for consulting services, the number of hours worked, and the amount paid to the contractor by the State as compensation for work performed by those employees. This includes information on any persons working under any subcontracts with the Contractor. The law defines contracts for consulting services to include any contract entered into by a State agency for analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services. For further information about this requirement, please refer to XI.18.C.

Consultant Disclosure Legislation. This information can be found at:

<http://www.osc.state.ny.us/agencies/guide/MyWebHelp/Content/XI/18/C.htm>

The selected Offeror will be required to provide a completed **Exhibit I.IA “State Consultant Services Contractor’s Planned Employment From Contract Start Date Through the End of the Contract Term – Form A”**(hereinafter “Form A”) at the time the Contract is executed. The completed form must include information for all employees providing such services under the Contract whether employed by the Vendor or a Subcontractor. Please note that the form captures the necessary planned employment information prospectively from the start date of the Contract through the end of the contract term.

Further, the selected Offeror will be required to report annually to the Department and to OSC the employment information described above, including work performed by subcontractors. The Vendor shall submit a completed **Exhibit I.IB “State Consultant Services - Contractor’s Annual Employment Report – Form B”** (hereinafter “Form B”) for each State Fiscal Year during the term of the Contract. During the term of the Contract, such report shall be due no later than May 15 of each year following the end of the State Fiscal Year being reported.

9. Disclosure of Proposal Contents – Freedom of Information Law (FOIL)

NOTICE TO OFFEROR’S LEGAL COUNSEL

All materials submitted by an Offeror in response to this RFP shall become the property of the Department and may be returned to the Offeror at the sole discretion of the Department. Proposals may be reviewed or evaluated by any person, other than one associated with a competing Offeror, designated by the Department. Offerors may anticipate that Proposals will be evaluated by staff and consultants retained by the Department and may also be evaluated by staff of other NYS agencies interested in the provision of the subject services including, but not limited to, the Governor’s Office of Employee Relations and the Division of the Budget, unless otherwise expressly indicated in this RFP. The Department has the right to adopt, modify, or reject any or all ideas presented in any material submitted in response to this RFP.

To request that materials be protected from FOIL disclosure, the Offeror must follow the procedures below regarding the New York State Freedom of Information Law (FOIL). If an Offeror believes that any information in its Proposal or supplemental submission(s) constitutes proprietary and/or trade secret information and desires that such information not be disclosed if requested pursuant to the New York State Freedom of Information Law, Article 6 of the Public Officers Law, the Offeror must make that assertion by completing **Exhibit I.C, “Freedom of Information Law – Request for Redaction Chart.”** The Offeror must complete the form specifically identifying by page number, line, or other appropriate designation, the specific information requested to be protected from FOIL disclosure and the specific reason why such information should not be disclosed. Page 2 of Exhibit I.C contains information regarding appropriate justification for protection from FOIL disclosure. Vague, non-specific, summary allegations that material is proprietary or trade-secret are inadequate and will not result in protection from FOIL disclosure.

The completed **Exhibit I.C** must be submitted to the Department at the time of its Proposal submission; it should be included with the Requested Redactions (CD and Hard Copy),

described below. It should not be included in the Offeror's Proposal. If the Offeror chooses not to assert that any Proposal material and/or supplemental submission should be protected from FOIL disclosure, the Offeror should so advise the Department by checking the applicable box on **Exhibit I.C** and submitting it to the Department at the time of its Proposal submission, but separately from its Proposal. If a completed **Exhibit I.C** form is not submitted, the Department will assume that the Offeror chooses not to assert that any proposal material or supplemental submission, as applicable should be protected from FOIL disclosure.

The FOIL-related materials described herein will not be considered part of the Offeror's Proposal and will not be reviewed as a part of the Procurement's evaluation process.

Requested Redactions (CD and Hard Copy):

At the time of Proposal submission, the Offeror is required to identify the portions of its Proposal that it is requesting to be redacted, in accordance with the instructions below, to be used in the event that its Proposal is the subject of a Freedom of Information Law (FOIL) request received by the Department:

The Offeror must provide an electronic copy of the Administrative Proposal, the Cost Proposal and the Technical Proposal, each on a separate CD, which reflect the Offeror's requested redactions. Additionally, the Offeror must provide a separately bound hardcopy of each of the three (3) Proposal documents with redactions marked that are included on the CDs. The electronic documents must be prepared in PDF format using the Redaction Function in Adobe Acrobat Professional software, version 8 or higher. Each specific portion of the Proposal documents requested to be protected from FOIL disclosure must be identified using the Adobe **"Mark for Redaction" function; do not use the "Apply Redactions" function.** The resulting documents must show the Offeror's requested redactions as outlined, while the content remains visible. This will allow the Department to either apply or remove requested redactions when responding to FOIL requests. The documents included on the CD and in hard copy must be complete Proposals, including all Exhibits and Attachments. No section may be omitted from the CD or hard copy even if the entire section is requested to be redacted; such sections should be marked for redaction, not removed. For forms, exhibits and charts please mark for redaction only those cells/fields/entries that meet the criteria for protection from FOIL, not the entire page.

During the Proposal evaluation process, the Department may request additional information through clarifying letters and at management interviews. Any requested redactions for additional written material provided by the Offeror in response to the Department's requests

also must be submitted following the instructions, above.

10. Compliance with New York State Workers' Compensation Law

Sections 57 and 220 of the New York State Workers' Compensation Law (WCL) provide that the Department shall not enter into any contract unless proof of workers' compensation and disability benefits insurance coverage is produced. Prior to entering into a contract with the Department, the selected Offeror and Key Subcontractor(s) or Affiliates, with more than \$100,000 in expected expenses over the life of the contract, if any, will be required to verify for the Department, on forms authorized by the New York State Workers' Compensation Board, the fact that they are properly insured or are otherwise in compliance with the insurance provisions of the WCL. The forms to be used to show compliance with the WCL are listed in **Exhibit I.W, "Compliance with NYS Workers' Compensation Law."** Any questions relating to either workers' compensation or disability benefits coverage should be directed to the State of New York Workers' Compensation Board, Bureau of Compliance at 518-486-6307. You may also find useful information at their website: <http://www.wcb.ny.gov>.

Submission of the proof of workers' compensation and disability benefits insurance coverage is required at the time of Proposal submission. Failure to provide verification of either of these types of insurance coverage with the Offeror's Administrative Proposal may be grounds for disqualification of an otherwise successful Proposal.

To the extent that the Offeror is proposing the use of Key Subcontractors or Affiliates (i.e., part of the Offeror's proposed Project Team), the Offeror must verify for the Department, on forms authorized by the New York State Workers' Compensation Board, the fact that the Key Subcontractors or Affiliates are properly insured or are otherwise in compliance with the insurance provisions of the WCL.

11. Iran Divestment Act

By submitting a Proposal in response to this solicitation or by assuming the responsibility of a contract awarded hereunder, Offeror/Contractor (or any assignee) certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/Offerers 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 such contract any subcontractor that is identified on the Prohibited Entities List. Additionally, Offeror/Contractor is advised that should it seek to renew or extend an

Agreement awarded in response to the solicitation, it must provide the same certification at the time the Agreement is renewed or extended.

During the term of the Agreement, should the Department of Civil Service receive information that a person (as defined in State Finance Law Section 165-a) is in violation of the above-referenced certifications, the Department of Civil Service 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 activity which is in violation of the Act within 90 days after the determination of such violation, then the Department of Civil Service 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.

The Department of Civil Service reserves the right to reject any Proposal, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

12. New York Subcontractors and Suppliers

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the State and the nation. In recognition of their economic activity and leadership in doing business in New York State, Offerors for this contract for PPACA Compliance Services or are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Offerors need to be aware that all authorized users of this contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in utilizing services and technology. Furthermore, Offerors are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the Contractor and its New York State business partners. New York State businesses will promote

the Contractor's optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects Offerors to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers. Offerors are required to complete **Exhibit I.U.2, "NYS Subcontractors and Supplies."**

SECTION III: ADMINISTRATIVE PROPOSAL

This section of the RFP sets forth the requirements for the Offeror's Administrative Proposal submission, including the Minimum Mandatory Requirements that must be satisfied to qualify an Offeror to be considered for selection. The Department will accept Proposals only from qualified Offerors and will consider for evaluation and selection purposes only those Proposals the Department determines to be in compliance with the Minimum Mandatory Requirements set forth in this Section III of this RFP.

The Offeror's *Administrative Proposal* must respond to all of the following items as set forth below in the order and format specified and using the forms set forth in this RFP. Additional details pertaining to the required forms are found in Section II.B Compliance With Applicable Rules, Laws, Regulations & Executive Orders, and Section III.

The Administrative Proposal must contain the following information, in the order enumerated below:

A. Formal Offer Letter

At this part of its Administrative Proposal, the Offeror must submit a formal offer in the form of the "**Formal Offer Letter**" as set forth in **Exhibit I.S**. The formal offer must be signed and executed by an individual with the capacity and legal authority to bind the Offeror in its offer to the State. Each of the two copies of the Offeror's Administrative Proposal marked "ORIGINAL" requires a letter with an original signature; the remaining copies of the Offeror's Administrative Proposal may contain photocopies of the signature. The Offeror must accept the terms and conditions as set forth in this RFP, Section VII, and Appendices A, B, C, C-1, D, D-1 and D-2 and agree to enter into a contractual Agreement with the Department containing, at a minimum, the terms and conditions identified in this RFP section and appendices as cited herein. (**Note:** Appendix A, "Standard Clauses for New York State Contracts" is a compilation of statutory requirements applicable to all persons and entities contracting with the State and therefore has been deemed to be non-negotiable by the Offices of the Attorney General and the State Comptroller. Appendix B, "Standard Clauses for All Department Contracts", Appendix C, "Third Party Connection and Data Exchange Agreement", Appendix C-1 "Information Security Standards", 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 are compilations of standard clauses/ requirements for the

contracts and also are non-negotiable.) If an Offeror proposes to include the services of a Key Subcontractor(s) or Affiliate(s), the Offeror must be required to assume responsibility for those services as “Prime Contractor.” The Department will consider the Prime Contractor solely responsible for contractual matters.

B. Minimum Mandatory Requirements

The Department will only accept Proposals from Offerors that attest and demonstrate through current valid documentation to the satisfaction of the Department that the Offeror meets the Proposal’s Minimum Mandatory Requirements set forth herein this Section III.B of this RFP. At this part of its Administrative Proposal, the Offeror must submit a completed **Exhibit I.T “Offeror Attestations Form”** representing and warranting that:

1. The Offeror, at time of Proposal Due Date and throughout the term of the Contract, must be authorized to conduct business in New York State, or, if the Offeror is not so authorized at time of Proposal Due Date, then the Offeror must, at time of Proposal Due Date, have filed an application for authority to do business in New York State with the New York State Secretary of State. Such application must be approved prior to Contract Award. (For details concerning this requirement, refer to: http://www.dos.ny.gov/corps/forms_listing.html.)

To register with the Secretary of State, contact: <https://www.dos.ny.gov/corps/index.html>. The Contractor shall notify the Department immediately in the event that there is any change in the above corporate status.

2. The Offeror must represent and warrant that, at time of Proposal submission, it has completed, obtained or performed all registrations, filings, approvals, authorizations, consents and examinations required by any governmental authority for the provision of the delivery of Project Services and agree that it will, during the term of the Contract, comply with any requirements imposed upon it by law.;
3. The Offeror's principal place of business is not located in a state that penalizes New York State vendors and that, if selected goods or services provided under the Agreement will not be substantially produced or performed in such a state;
4. The Offeror has provided similar services for at least one client with a population of 200,000 individuals or more;

5. The Offeror has successfully registered and been approved to utilize the IRS' Affordable Care Act Information Returns (AIR) system for purposes of transmitting information to the IRS;

6. The Offeror, if selected, will, under the Agreement, maintain and make available as required by the State, a complete and accurate set of records as may be required by the State to be produced for review by the State pursuant to the terms and conditions of this RFP, Appendices A and B, and including any and all financial records as deemed necessary by the State to discharge its fiduciary responsibilities to Program participants and to ensure that public dollars are spent appropriately;

7. The Offeror understands it must distribute Program communication materials in both paper and/or electronic format; and

8. The Offeror must represent and warrant that, at time of Proposal submission, it possesses adequate staffing resources, financial resources and organizational capacity to perform the type, magnitude and quality of work specified in the RFP.

Note: Any Offeror which fails to satisfy any of the above Minimum Mandatory Requirements shall be eliminated from further consideration.

C. Exhibits

At this part of its Administrative Proposal, the Offeror must complete and submit the various Exhibits specified in Section II.B and Section III of this RFP, in satisfaction of the regulatory requirements described therein. A listing of the required Exhibits is set forth below:

Exhibit Name	Exhibit
Proposal Submission Requirement Checklist	Exhibit I.A
MacBride Statement and Non-Collusive Bidding Certification	Exhibit I.D
Offeror’s Affirmation of Understanding and Agreement	Exhibit I.K*
Compliance with Public Officer’s Law Requirements	Exhibit I.M
Compliance with Americans with Disabilities Act	Exhibit I.N
MWBE Utilization Plan (Form MWBE-100)	Exhibit I.O
Offeror’s Certificate of Compliance Pursuant to State Finance Law §139-k	Exhibit I.P
Formal Offer Letter	Exhibit I.S
Offeror Attestations Form	Exhibit I.T
Key Subcontractors or Affiliates	Exhibit I.U.1
NYS Supplier and Subcontractor	Exhibit I.U.2
Compliance with NYS Workers’ Compensation Law	Exhibit I.W
Extraneous Terms Template (if proposing)	Exhibit I.X

***Note: If not already provided to the Department by the time of Proposal submission, the Offeror must enclose a completed Exhibit I.K - Offeror’s Affirmation of Understanding and Agreement with their Administrative Proposal.**

D. Key Subcontractors or Affiliates

At this part of its Administrative Proposal, the Offeror must provide a statement identifying all Key Subcontractors or Affiliates, if any, that the Offeror will be contracting with to provide Program Services and must, for each such Key Subcontractor or Affiliate identified, complete and submit **Exhibit I.U.1**; “Key Subcontractors or Affiliates:”

1. Provide a brief description of the services to be provided by the Key Subcontractor or Affiliate; and
2. Provide a description of any current relationships with such Key Subcontractor or Affiliate and the clients/projects that the Offeror and Key Subcontractor or Affiliate are currently servicing

under a formal legal agreement or arrangement, the date when such services began and the status of the Project.

The Offeror must indicate whether or not, as of the date of the Offeror's Proposal, a subcontract (or shared services agreement) has been executed between the Offeror and the Key Subcontractor or Affiliate for services to be provided by the Key Subcontractor or Affiliate relating to this RFP. If the Offeror will not be subcontracting with any Key Subcontractor(s) or Affiliate(s) to provide Project Services, the Offeror must provide a statement to that effect.

E. Financial Statements

At this part of its Administrative Proposal, the Offeror must, provide a copy of the Offeror's last issued GAAP annual audited financial statement. A complete set of statements, not just excerpts, must be provided. Additionally, for each Key Subcontractor or Affiliate, if any, that provides any of the Project Services; which are the subject matter of this RFP, provide the most recent GAAP annual audited statement. If the Offeror, or a Key Subcontractor or Affiliate, is a privately held business and is unwilling to provide copies of their GAAP annual audited financial statements as part of their Proposal, the Offeror/Key Subcontractor/Affiliate must make arrangements for the Procurement evaluation team to review the financial statements.

Note: If financial statements have not been prepared and/or audited, the Offeror /Key Subcontractor/ Affiliate must provide the following as part of its Administrative Proposal: a letter from a bank reference attesting to the Offeror/Key Subcontractor/Affiliate's financial viability and creditworthiness. (Note: For purposes of this reference, the Offeror may not give as a reference, a parent or subsidiary company, a partner or an Affiliate organization.) The letter must include the bank's name, address, contact person name and telephone number and it must address, at a minimum, the following items:

1. A brief description of the business relationship between the parties (i.e., the Offeror/Key Subcontractor/Affiliate and the bank), including the duration of the relationship and the Offeror's current standing with the bank. For example: "*The (Offeror/Key Subcontractor/ Affiliate's name) is currently and has been for "x" number of years a client in good standing*";
2. Description of any ownership/partner relationship that may exist between the parties, if any. (**Note:** One party cannot be the parent, partner or subsidiary of the other, nor can one party be an affiliate of the other); and,

3. Any other facts or conclusions the bank may deem relevant to the State in regard to the bank's assessment of the Offeror /Key Subcontractor/Affiliate's financial viability and creditworthiness concerning the nature and scope of the Program Services, which are the subject matter of this RFP, and the Parties (i.e., Department, and the Offeror or the Offeror and Key Subcontractor or Affiliate) contractual obligations should the Offeror be awarded the resultant Contract.

SECTION IV: TECHNICAL PROPOSAL REQUIREMENTS

The Department seeks through this RFP process to award a Contract (Agreement) to a qualified Offeror to provide Patient Protection and Affordable Care Act (PPACA) Compliance Services. The purpose of this section of this RFP is to set forth the programmatic duties and responsibilities required of the Offeror by the Department and to obtain required submissions concerning those duties and responsibilities. The Offeror's Technical Proposal must contain responses to all of the required submissions from the Offeror in the format requested. Each Offeror may submit only one Technical Proposal. Each Offeror's Technical Proposal will be evaluated based on each Offeror's responses to the required submissions contained in this Section IV of this RFP.

Note: Numbers, data, or statistics which may appear in the Exhibits referenced throughout this RFP are for informational purposes only and should not be used or viewed by prospective Offerors as guarantees or representations of any levels of past or future performance or participation.

The Department will accept Proposals only from qualified Offerors and will consider for evaluation and selection purposes only those Proposals that it determines meet the Minimum Mandatory Requirements in Section III of this RFP and are responsive to the duties and responsibilities set forth in this Section IV of this RFP.

Please note that Offerors must not include any cost information in the Technical Proposal, including exhibits or attachments. Proposed Performance guarantee amounts including fee amounts to be put at risk are not considered to be cost information and therefore should be included in the Technical Proposal.

A. Program Administration

1. Executive Summary

a. Required Submission

The Offeror must submit an Executive Summary outlining its overall program and its capacity to provide PPACA Compliance Services as described in this RFP. The Executive Summary must include:

- (1) The name and address of the Offeror's main and branch offices and the name of the senior officer who will be responsible for this account;

- (2) A description of the Offeror's understanding of the requirements presented in this RFP and how the Offeror can assist the Department in accomplishing its objectives;
- (3) A statement explaining the Offeror's, and the Offeror's Key Subcontractor's, previous experience providing PPACA Compliance Services to other state governments, large public entities or any other organization. Detail how this experience qualifies the Offeror and, if applicable, the experience of its Key Subcontractors to undertake the functions and activities required by this RFP;
- (4) Specify which function(s), if any, will be subcontracted.

2. Qualifications

The Offeror must have the experience, reliability, and integrity to administer PPACA Compliance Services as required by this RFP.

a. Required Submission

The Offeror must demonstrate its acceptance of the duties and responsibilities set forth in this RFP and ensure the State's compliance with the specified requirements of PPACA. The Offeror must demonstrate that it has the financial and operational wherewithal to administer the Services as required by this RFP. Offerors should provide detailed responses to the following:

- (1) What experience does the Offeror have in implementing, managing, and providing PPACA Compliance Services to other large employers? Include the timetable for implementation of each referenced client's PPACA Compliance Services, adherence to the schedule (e.g. was it implemented on time?), any issues that arose during implementation or ongoing operation, and an explanation of how those issues were resolved.
- (2) Explain how the Offeror's account team will be prepared to provide these Services?
- (3) What internal systems or procedures will the Offeror have in place to provide the outlined requirements of the PPACA Compliance Services RFP?

B. Project Services

The Offeror must demonstrate its capacity to provide the required Project Services described in this Section IV of this RFP.

1. Account Team

The Department expects the successful Offeror to have in place a proactive, experienced program manager and an experienced team who have the authority to coordinate the appropriate resources to implement and administer the Services to be provided.

a. Duties and Responsibilities

- (1) The Offeror 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;
- (2) The Contractor must propose a 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 2 two years of experience serving as a manager. The Contractor must advise the Department immediately if replacement of the manager is contemplated during the term of the Agreement;
- (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;
- (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 requirements and to address any issues that may arise during the performance of the Agreement;
- (5) The Offeror's assigned account team must immediately notify the Department of actual or anticipated events impacting PPACA Compliance Services such as but not limited to, legislation, litigation, and operational issues;

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- (6) The Offeror's assigned account team must ensure that the Department is compliant with all relevant PPACA legislative and statutory requirements. If the Offeror is unable to comply with any legislative or statutory requirements, the Department must be notified in writing immediately; and

b. Required Submission

- (1) Provide an organizational chart and narrative description illustrating how the Offeror proposes to administer, manage, and oversee all aspects of the PPACA Compliance Services to be provided. Include the names, qualifications, and job descriptions of the key individuals proposed to comprise the implementation, operational, and management team for the Offeror and its Key Subcontractor(s) (if applicable). Complete **Exhibit I.B**, Biographical Sketch Form, of this RFP for all key members of the proposed account management team. Where key individuals are not named, include qualifications of the individuals that you would seek to fill the positions. Include the following:
- (a) Reporting relationships and the responsibilities of each key position of the account management team; and how the team will interact with other business units or functional areas within the Offeror's organization. The Offeror must include the percentage of time (by position) dedicated to the Services and reporting relationships. Describe how the account management team interfaces with senior management and ultimate decision makers within the Offeror's organization;
- (2) Describe the experience of the individual who will assume the role of program manager for the PPACA Compliance Services. Include a description of the individual's experience with clients whose needs were of similar size and scope as those of the Department.
- (3) Confirm that the account team will be readily accessible. Describe where the account team will be based.
- (a) Describe how the Offeror proposes to ensure that timely responses (one (1) Business Day) are provided to concerns and inquiries.
 - (b) Describe the protocols that will be put into place to ensure the Department will be kept abreast of actual or anticipated events impacting costs and/or delivery of Services to the Department. Provide a representative scenario.

- (4) Describe the corporate resources that will be available to the account team to ensure compliance with all legislative and statutory requirements. Confirm the Offeror's commitment to notify the Department immediately if the Offeror were to be unable to comply with any legislative or statutory requirements and to work with the Department to take the appropriate remedial action to come into compliance as soon as practicable.

2. Workforce Analytics

a. Duties and Responsibilities

The Offeror must confirm that it will meet the following Duties and Responsibilities if selected to enter an agreement with the Department as a result of this RFP:

- (1) Using the guidelines of Section 4980H of the Internal Revenue Code (IRC) and payroll records provided by the State, the Offeror must identify the full-time status of all employees for calendar year 2018 and all years covered under the Agreement resulting from this RFP;
- (2) Provide reporting to the State that clearly documents and illustrates all employees' full-time status under Section 4980H of the IRC for calendar year 2018 and all years covered under the Agreement resulting from this RFP. 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. Such reporting must occur on a monthly basis;
- (3) Using employee health insurance eligibility information provided by the State, the Offeror 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;
- (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;

- (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;
- (6) Initial Testing of File Transmission:
 - (a) Performing an initial load of each employee record file to commence upon receipt of a test file from the Department during 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;
 - (b) 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) Upon 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 under this Agreement;
- (8) **Data Management:** The Program's service level standard requires that one hundred percent (100%) of all files that meet the quality standards for loading must be loaded into the Offeror's database and reviewed within one (1) week of release by the Department; and

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- (9) **Workforce Analytics Reporting:** The Plan's service level standard requires that accurate reports as specified in Section IV.B.2.a.(2)-(3) of this RFP, 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, inclusive of the date of receipt.

b. Required Submission

- (1) Provide a detailed description of the Offeror's plan to determine the full-time status of all employees for calendar year 2018 and all years covered under the agreement resulting from this RFP;
- (2) Provide a detailed outline of the Offeror's plan to establish a secure connection with IT during implementation. The outlines should include roles, responsibilities, timelines, testing dates and objectives, as well as areas where complications can be expected.
- (3) Provide sample reports to track employees' full-time employment status. 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;
- (4) Provide sample reports to identify and track employees not currently under an offer of coverage;
- (5) Provide a sample report to identify the State's compliance with the PPACA employer shared responsibility provisions to provide an offer of health insurance coverage to at least ninety-five percent (95%) of NYS' full-time employees;
- (6) Describe the Offeror's proposed testing plan to ensure that the initial files sent by the Department are loaded accurately to the Offeror's system;
- (7) Describe the Offeror's system capabilities for retrieving, reviewing, and maintaining employment information within one (1) week of its release by the Department as well as:
- (a) How the Offeror's system will maintain a history of employment data and how long employment history will be kept online. Indicate whether or not there will be a limit as to the quantity of historic data that can be kept online.

- (b) How the Offeror's system will handle retroactive changes and corrections to employment data; and
- (8) Confirm upon termination of the Agreement, the Offeror agrees 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.
- (9) **Data Management Performance Guarantee:** The Program's service level standard requires that one hundred percent (100%) of all Program files that meet the quality standards for loading be loaded into the Offeror's database and reviewed for errors within one (1) week of release by the Department. The Offeror shall propose the forfeiture of a specific dollar amount of the monthly Workforce Analytics Fee for failure to meet this level of standard.

The Standard Credit Amount for each Calendar Day, or portion thereof, beyond one (1) week from the day the Department releases Program files to the Offeror and one hundred percent (100%) of those files that meet the quality standards for loading are not loaded into the Offeror's database and reviewed is \$500. However, Offerors may propose higher or lower amounts.

"The Offeror's quoted amount to be credited against the monthly Workforce Analytics Fee for each Calendar Day, or portion thereof, beyond one (1) week from the day the Department releases Program files to the Offeror and one hundred percent (100%) of those files that meet the quality standards for loading are not loaded into the Offeror's database and reviewed, is \$_____."

- (10) **Workforce Analytics Reporting Performance Guarantee:** The Plan's service level standard requires that, for the Workforce Analytics reports listed in Section IV.B.2.a.(2)-(3) of this RFP, accurate reports will 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. The Offeror shall propose the forfeiture of a specific dollar amount of the Offeror's monthly Workforce Analytics Fee.

The Standard Credit Amount for each management report that is not received by its respective due date is \$250 per report for each Calendar Day, and portion thereof. However, Offerors may propose higher or lower amounts.

“The Offeror’s quoted amount to be credited against the Offeror’s monthly Workforce Analytics Fee for each management report listed in Section IV.B.2a.(2)-(3) that is not received by its respective due date, 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.”

3. Statutory IRS (IRC Section 6055 and 6056) Reporting

a. Duties and Responsibilities

The Offeror shall be responsible for providing complete administration for ACA reporting requirements included in IRC Section 6055 and 6056 for calendar year 2018 and thereafter. Do not provide any cost proposal information in your response. Such responsibilities shall include the items listed below;

- (1) The Offeror 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 Offeror must provide a paper copy of Form 1095-C to all required individuals. The Offeror’s proposed fee included in Section V, Cost Proposal Requirements, shall be inclusive of all costs, including postage, associated with this task;
- (2) The Offeror must complete all required Statutory IRS Reporting as specified in Section IV.B.3.a of this RFP; this includes reporting for the final 2022 tax year under the Agreement;
- (3) The Offeror 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;
- (4) 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).

- (5) At the request of the State, the Offeror 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 Statutory IRS Reporting Fee proposed by the Offeror in Exhibit III.B of this RFP for the applicable tax year. If the need to send corrected forms stems from an error made by the Offeror, no additional fee shall be charged for the production, printing, and distribution of such forms;
- (6) The Offeror must report all errors identified by the IRS to the State. At the request of the State, the Offeror 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 Statutory IRS Reporting Fee proposed by the Offeror in Exhibit III.B of this RFP for the applicable tax year. If the need to send corrected information to the IRS stems from an error made by the Offeror, no additional fee shall be charged for the resubmission of such information;
- (7) The Offeror 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; and
- (8) ***Statutory IRS Reporting:*** The Offeror must reimburse the Department for any and all federal reporting penalties that are incurred solely due to actions or inactions of the Offeror at a rate no less than 100% of the amount assessed against the Department under Sections 6055 and 6056 of the Internal Revenue Code (IRC). The Department will allow the Offeror to participate to participate in any negotiations with the Internal Revenue Service with respect to such penalties.

b. Required Submission

- (1) Describe the Offeror's process for preparing, printing, and distributing Form 1095-C to all required individuals by the due date established by the federal government that is HIPAA compliant;
- (2) Confirm all Statutory IRS Reporting as specified in Section IV.B.3.a of this RFP, including reporting for the final 2022 tax year under the Agreement will be completed;

- (3) Describe the Offeror's process for transmitting all required information, including Form 1094-C, to the IRS by the due date established by the federal government using the IRS' ACA Information Return system, also known as AIR that is HIPAA compliant;
- (4) Confirm the Offeror will include Cornell University's Form 1095-Cs and population data in the filing of Form 1094-C to the IRS; filing will occur under one EIN. Cornell University will determine their Full-Time population and distribute Form 1095-C to their population independently of this contract;
- (5) Describe the process by which the Offeror reports all errors identified by the IRS to the State, as well as the process by which these errors are corrected and resubmitted;
- (6) Describe the capabilities of the online system that will allow the Department to access, reprint, and distribute copies of form 1095-C to employees of the State; and
- (7) **Statutory IRS Reporting Performance Guarantee.** The Offeror must guarantee to fulfill all required federal reporting under Sections 6055 and 6056 of the Internal Revenue Code, as listed in Section IV.B.3.a. All 1095-Cs will be submitted timely and accurately to all required individuals, and 1094-C will be submitted timely and accurately to the Internal Revenue Service. The Offeror shall be liable to reimburse the State for all federal penalties incurred due to the Offerors' failure to meet reporting deadlines under Sections 6055 and 6056 of the Internal Revenue Code (IRC). The Department will allow the Offeror to participate in any negotiations with the Internal Revenue Service with respect to such penalties.

Late reporting penalties will be paid to The Department, by the Offeror at a rate no less than 100% of the amount levied against The Department. However, Offeror's may propose reimbursement at a percentage greater than 100 percent (%) of the assessed federal penalty.

The Offerors' quoted percent of federal penalty paid to the Department is _____ percent (%) of all federal timely filing penalties incurred solely due to the Offerors failure to meet federal filing deadlines and standards under Sections 6055 and 6056 of the Internal Revenue Code (IRC).

4. Maintenance of Confidential Employee Records

a. Duties and Responsibilities

The Offeror 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:

- (1) Maintain confidential employee data including employment records, health insurance enrollment records, and personal information.
- (2) Using appropriate, documented safeguards to prevent the use or disclosure of employee data other than as required by this RFP. The selected Offeror shall maintain a comprehensive written information security program that includes administrative, technical, and physical safeguards appropriate to the size and complexity of the selected Offeror's operations and the nature and scope of its activities.

b. Required Submission

- (1) Describe how the Offeror's process for establishing, maintaining, and securing confidential case records that is HIPAA compliant;
- (2) Submit a copy of the Offeror's information security program that includes administrative, technical, and physical safeguards for confidential employee records. If company policy precludes distribution of the information security program, the Offeror must make arrangements for the Departments review.

C. Diversity Practices Questionnaire

Diversity practices are the efforts of contractors to include New York State-certified Minority and Women-owned Business Enterprises ("MWBEs") in their business practices. Diversity practices may include past, present, or future actions and policies, and include activities of contractors on contracts with private entities and governmental units other than the State of New York. Assessing the diversity practices of contractors enables contractors to engage in meaningful, capacity-building collaborations with MWBEs.

The Department has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of respondents to this procurement is practical, feasible, and appropriate. Accordingly, respondents to this procurement shall be required to include as part of

their response to this procurement, as described in this section and in Section VI, herein, Form Exhibit IV.B entitled “Diversity Practices Questionnaire.”

a. Required Submission

The Offeror must submit the Diversity Practices Questionnaire (Exhibit IV.B) signed by both the Offeror’s authorized representative and public notary. The Offeror’s completion of the questionnaire is voluntary and blank submissions will not disqualify an Offeror from the procurement.

SECTION V: COST PROPOSAL REQUIREMENTS**A. General:**

The information in this Section A, and Section B below, is presented for use by Offerors in developing their Cost Proposal. Additional information which may impact an Offeror's proposed pricing may be contained in other sections of this RFP, including but not limited to Section VII. Each Offeror may submit **only one** Cost Proposal.

1. The ***Workforce Analytics Fee*** quoted must be a fixed all-inclusive rate to be assessed and paid to cover all of the Offeror's costs in fulfilling its duties and responsibilities in the performance of Workforce Analytics as set forth in Section IV.B.2.a of this RFP. The ***Workforce Analytics Fee*** will be a fixed monthly fee charged to the Department, and guaranteed for the duration of the applicable tax year. Quoted fees that fluctuate within the tax year will not be accepted by the Department. However, Offerors may propose amounts that are different for each tax year over the five (5) year term of the Contract as specified in **Exhibit III. A**, "PPACA Compliance Services Workforce Analytics Fee". However, such amounts cannot be based on any index or variable inflation rate. Once the contract is awarded, any changes to the quoted fee must satisfy the terms and conditions outlined in Section VII, Article 6.2.0 of the draft contract to this RFP.
2. The ***Statutory IRS Reporting Fee*** must be a fixed all-inclusive rate to be assessed and paid for each Form 1095-C sent to required individuals and transmitted to the IRS. This fee will also apply to corrected forms resubmitted due to an error on behalf of the Department. The quoted fixed fee will cover all the Offeror's costs, including postage, in fulfilling its duties and responsibilities in the performance of Statutory IRS Reporting Program Services as set forth in Section IV.B.3.a of this RFP. The ***Statutory IRS Reporting Fee*** will be a fixed fee charged to the Department and guaranteed for the duration of the applicable tax year. Offerors may propose amounts that are different in each year over the five (5) year term of the Contract as specified in **Exhibit III.B**, PPACA Compliance Services Statutory IRS Reporting Fee. However, such amounts cannot be based on any index or variable inflation rate. Once the contract is awarded, any changes to the quoted fee must satisfy the terms and conditions outlined in Section VII, Article 6.2.0 of the draft contract to this RFP.
3. The Offeror shall not charge the Department for any other fees or costs other than those specified in Section V.A.1 and V.A.2 of this RFP.

4. For calendar year 2016, the State provided Form 1095-C to 258,589 individuals and reported health insurance coverage for an additional 252,246 dependents. For calendar year 2015, the State provided Form 1095-C to 257,585 individuals and reported health insurance coverage for an additional 254,495 dependents. The Offeror shall assume that the number of forms and total covered lives to be distributed under the Agreement shall be consistent with these figures. However, the Department cannot guarantee that, during the term of the Agreement, the size of this population will remain consistent. Additionally, for State employees at Cornell University, the university determines the Full-Time status of these employees and provides Form 1095-C to this population outside of the process outlined in this RFP. Cornell University then provides a count of all State employees who received a Form 1095-C to the State of New York. This reporting is included in the State's Form 1094-C filing. Thus, Form 1094-C will include a larger number of individuals than the number of individuals to whom Form 1095-C was distributed pursuant to this Agreement.
5. The Offeror shall bill the Department on a monthly basis for the Workforce Analytics Fee via the submission of a monthly invoice. The Offeror shall bill the Department on an annual basis for the Statutory IRS Reporting Fee after the successful transmission of required information to the IRS. Upon the Contractor's submission of an invoice and supporting documentation, the Department shall prepare a voucher to submit to the Office of the State Comptroller (OSC). After OSC review, OSC shall electronically transfer the requested funds to the Contractor. On average, payment will be within 30 Days after the receipt of the monthly invoice by the Department. Performance credits (if any) will be reflected in the monthly invoice and deducted from the amount paid to the Contractor.

B. Offeror's Cost Proposal

The following describes the requirements for Offerors' Cost Proposal submissions:

1. The Department expects Offerors will propose aggressive pricing consistent with the size of the Department's Program. Offerors must complete and submit **Exhibits III.A and III.B**, of this RFP setting forth its proposed 'Workforce Analytics Fee' and 'Statutory IRS Reporting Fee.' Offerors' proposed Workforce Analytics Fee' and 'Statutory IRS Reporting Fee' as set forth in the Offeror's **Exhibit III.A and Exhibit III.B** respectively, submission must be **guaranteed** for the term of the Agreement, although Offerors may propose varying fee levels for each year of the Agreement. **Offerors must fill in quotes in the spaces provided. The Department will not accept modifications to these exhibits.**

SECTION VI: EVALUATION AND SELECTION CRITERIA

Proposals determined by the Department to satisfy the submission requirements set forth in Section III of this RFP will be evaluated by the Department, assisted by any person(s), other than one associated with a competing Offeror, designated by the Department. Proposals will be made available to representatives of State employee unions for review and comment. An Offeror's Proposal may be removed from the evaluation process and not be considered should it be determined that the Offeror did not demonstrate to have met one of more of the Minimum Mandatory Requirements set forth in Section III of this RFP, despite any attestation made by the Offeror regarding the Minimum Mandatory Requirements.

During the evaluation process, the Department may require clarifying information from an Offeror for the purpose of assuring the Department's full understanding of the Offeror's responsiveness to the RFP requirements and the duties and responsibilities set forth therein. This clarifying information must be submitted in writing in accordance with formats set forth in Section II of this RFP and, if submitted timely, shall be included as a formal part of the Offeror's Proposal. Failure to provide required information by the due date set forth in the Department request for clarification may result in rejection of the Offeror's Proposal. Nothing in the foregoing shall mean or imply that it is obligatory upon the Department to seek or allow clarifications provided for herein. The Department may, at its discretion, elect to perform site visits of Offerors facilities and have all Offerors provide oral presentations pertaining to their Proposal. The PPACA Compliance Services Procurement Manager will coordinate the arrangements with Offerors, as necessary.

The Department will consider for evaluation and selection purposes only those Proposals that, as determined by the State, meet the Minimum Mandatory Requirements specified in Section III of this RFP and are responsive to the duties and responsibilities set forth in this RFP. The evaluation will entail the review and scoring of the Offeror's Administrative, Technical, and Cost Proposals. The Technical and Cost evaluation process is based on 1,000 available points with 700 points available to the Technical Proposal and 300 points available to the Cost Proposal (i.e. 70% allocated to the Technical Proposal and 30% allocated to the Cost Proposal). The Technical Proposal and Cost Proposal are evaluated separately and scored as described below.

The Department intends to select the responsive and responsible Offeror whose Proposal offers the best value to the Department and the State as specified in the following evaluation criteria for the purpose of entering into negotiations for the execution of a Contract (i.e., the Agreement).

A. Technical Evaluation – 70% of Overall Score

The Technical Proposal of those Offerors' that meet the Minimum Mandatory Requirements will be evaluated by the Department, and others deemed appropriate by the Department. Each Offeror's ability and willingness to deliver the Services described in this RFP will be evaluated and scored based on a weighted point system. The evaluation of the Offeror's Technical Proposal will be based on that Offeror's written Technical Proposal, responses to any clarifying questions, oral presentation(s) conducted at the request of the Department to amplify and/or clarify that Offeror's proposed Technical Proposal, and site visits requested by the Department.

1. Technical Score Ratings

Offerors' Technical Proposals will be evaluated based on the following rating scale and criteria as applied to the Offeror's response to each evaluated requirement, except in the case of performance guarantees. A rating of "excellent" equates to a score of 5 for each evaluated requirement. Each reduction in the ratings results in a one point reduction in the score such that a rating of "poor" equates to a score of 1.

EXCELLENT (5)

The Offeror far exceeds the requirements. The response provided indicates that the Offeror will provide very high quality Program Services and is very pro-active and innovative.

GOOD (4)

The Offeror exceeds the requirements. The response provided indicates that the Offeror will exceed the Program's needs. The Offeror demonstrates some innovative features not shown in typical Proposals.

MEETS CRITERIA (3)

The Offeror meets but does not exceed the requirements. The response provided indicates that the Offeror will meet the Program's needs.

FAIR (2)

The Offeror's response is minimal; or the answer is very general and does not fully address the requirements; or the Offeror meets only some of the requirements.

POOR (1)

The Offeror misinterpreted or misunderstood the requirements; or the Offeror does not answer the requirements in a clear manner, or the Offeror does not address or meet the requirement.

The Offeror's commitment to meet or exceed the various Service Level Standards, including their associated standard performance credit amounts, as set forth in this RFP, will be evaluated and scored based on the following rating scale and criteria. For each Service Level Standard, said rating scale and criteria will be applied to the two components of the Offeror's proposed response to a given Service Level Standard: 1) the Offeror's proposed level of performance as guaranteed, and 2) the Offeror's proposed credit amount for the failure to meet the Offeror's guaranteed level of performance, as proposed (Credit Amount) to arrive at a score for a given Service Level Standard. (**Note:** An Offeror's proposed level of performance as guaranteed and its proposed credit amount are hereinafter collectively referred to as a "performance guarantee.")

2. Performance Guarantee Ratings

A rating of "excellent" equates to a score of 5 for each evaluated Service Level Standard. Each reduction in the ratings results in a one point reduction in the score such that a rating of "poor" equates to a score of 1.

Offeror may propose performance guarantees that exceed the minimum Service Level Standards and its associated standard performance credit amounts presented in this RFP. Proposed performance guarantees are contained within the respective technical areas and will be evaluated using the following rating scale and criteria:

a. EXCELLENT (5)

- (1) The Offeror's proposed level of performance as guaranteed exceeds the Program's Service Level Standard contained in this RFP; and
- (2) The Offeror's proposed credit amount is one hundred and twenty-five percent (**125%**) or more of the standard performance credit amount stated in this RFP.

b. GOOD (4)

- (1) The Offeror's proposed level of performance as guaranteed equals the Program's Service Level Standard contained in this RFP, and the Offeror's proposed credit amount is one hundred and twenty-five percent (**125%**) or more of the standard performance credit amount stated in this RFP; or
- (2) The Offeror's proposed level of performance as guaranteed exceeds the Service Level Standard contained in this RFP; and the Offeror's proposed credit amount is greater than one hundred percent (**100%**) but less than one hundred and twenty-five percent (**125%**) of the standard performance credit amount stated in this RFP.

c. MEETS CRITERIA (3)

- (1) The Offeror's proposed level of performance as guaranteed equals or exceeds the Program's Service Level Standard contained in this RFP; and
- (2) The Offeror's proposed credit amount equals the standard performance credit amount stated in this RFP.

d. FAIR (2)

- (1) The Offeror's proposed level of performance as guaranteed equals or exceeds the Program's Service Level Standard contained in this RFP; and
- (2) The Offeror's proposed credit amount is greater than fifty percent (**50%**) but less than one hundred percent (**100%**) of the standard performance credit amount stated in this RFP.

e. POOR (1)

- (1) The Offeror's proposed level of performance as guaranteed is below the Service Level Standard contained in this RFP regardless of the credit amount proposed by the Offeror; or
- (2) The Offeror's proposed credit amount is fifty percent (**50%**) or less of the standard performance credit amount stated in this RFP regardless of the level of performance as guaranteed by the Offeror.

3. **Performance Guarantee Standard Credit Amounts**

- a. **Data Management Performance Guarantee (Section IV.B.2.b.9):** The standard performance credit amount is five-hundred dollars (\$500) per Calendar Day, or portion thereof;.
- b. **Workforce Analytics Reporting Performance Guarantee (Section IV.B.2.b.10):** The standard performance credit amount is two-hundred fifty dollars (\$250) per Calendar Day, or portion thereof; and
- c. **Statutory IRS Reporting Performance Guarantee (Section IV.B.3.b.7):** The standard performance credit is 100 percent (%) of any and all federal timely filing penalties.

4. **Allocation of Technical Score Points**

The scores referenced above shall be applied to weighted point values associated with each evaluated requirement. The relative point value for each section of the Technical Proposal is as follows:

- a. **Program Administration- 15% of Total Technical Score**
 1. Executive Summary – 3%
 2. General Qualifications – 12%
- b. **Project Services – 85% of Total Technical Score**
 1. Account Team – 26%
 2. Workforce Analytics – 26%
 3. Statutory IRS Reporting – 26%
 - Maintenance of Confidential Employee Records – 7%

5. **Diversity Practice Questionnaire Scoring**

The New York State Diversity Practices Scoring Matrix (Exhibit IV.A) permits a maximum weight of ten percentage points (10%) to be added to the Technical Proposal, which results in 100 points that can be applied to the Offeror's evaluated Technical Proposal. The Total Diversity Score is directly proportional to the number of points that can be added to an

Offeror's Technical Proposal (e.g. a total Diversity score of 80 points equals 80 additional points on an Offeror's Technical Proposal). The scoring criteria is outlined below; for responses that fall between the outlined criteria, the evaluator will assign a score within the applicable range.

Criteria and Scoring for each Diversity Practices Question

a. Question 1

Yes - 5 Points will be awarded to affirmative responses that also supply the requisite evidence.

No - 0 Points will be awarded to negative responses, or responses that merely cited the officer without supply the requested evidence.

b. Question 2

Offerors will be scored based upon the percentage of gross revenue paid to MWBEs for the provision of goods and services for their company's clients and customers during the prior fiscal year. Offerors can only supply data from the prior fiscal year relative to MWBEs; data from other fiscal years, other business enterprises, or MWBEs not certified by the State will be disregarded. Points will be awarded based upon the following percentages:

≥ 20% - 20 points

≥ 15 - <20% - 14 points

≥ 10 - <15% - 10 points

≥ 5 - <10% - 6 points

≥ 1 - <5% - 2 points

< 1 % - 0 points

c. Question 3

Offerors will be scored based upon the percentage paid to MWBEs for overhead costs or non-contract related expenses during the prior fiscal year. Offerors can only supply data from the prior fiscal year relative to MWBEs; data from other fiscal years, other business enterprises, or MWBEs not certified by the State will be disregarded. Points will be awarded based upon the following percentages:

≥ 20% - 16 points

≥ 15 - <20% - 10 points

≥ 10 - <15% - 7 points

≥ 5 - <10% - 4 points

≥ 1 - <5% - 1 point

< 1% - 0 points

d. **Question 4**

Offerors will be scored on the number of MWBEs they provided industry specific technical training to, duration of training and total training hours. Training that is general and non-specific to the MWBEs' industry will not be counted.

Robust (16 points) – The Offeror has provided industry specific technical training to 1 or more MWBEs for 2 or more years, with 200 or more hours of training.

Moderate (8 points) - The Offeror has provided industry specific technical training to 1 or more MWBEs for at least 2 years, with between 100-199 hours of training.

Minimum (4 points) - The Offeror has provided industry specific technical training to 1 MWBE for 1 year or less, with 100 hours or less of training.

None (0 points) – The Offeror has not provided industry specific technical training; has provided only examples of general non-industry specific training; or claims to have provided industry specific training but has not provided substantiating documentation.

e. **Question 5**

Offerors will be scored on the number of MWBEs they are engaged in a government approved mentor protégé program with, the duration of the program, progress and impact of program, and supplying official governmental documents validating participation (the governmental entity approved program does not have to be through New York State).

Robust (12 points) - The Offeror is engaged in a mentor protégé program with 1 or more MWBEs for 2 or more years, and can provide evidence of substantial progress resulting from the program.

Moderate (8 points) - The Offeror is engaged in a mentor protégé program with 1 or more MWBEs for a duration of 1-2yrs, and can provide evidence of moderate progress resulting from the program.

Minimum (4 points) - The Offeror is engaged in a mentor protégé program with 1 MWBE for 1 year or less, can provide evidence of some progress resulting from the program.

None (0 points) – The Offeror has not engaged in a mentor protégé program; or is engaged in a mentor protégé program that is not approved by a governmental entity; or claims to be engaged in a mentor protégé program but has not provided substantiating evidence.

f. **Question 6**

Offeror will be scored on their current MWBE utilization goal for non-government procurements, level of achievement, and supporting documentation.

Robust (20 points) - The Offeror currently has a 10% goal and has achieved 80% of that goal.

Moderate (12 points) - The Offeror currently has a 7% goal and has achieved 80% of that goal.

Minimum (6 points) - The Offeror currently has a 3% goal and has achieved 80% of that goal.

No (0 points) – The Offeror has not established a goal; or claims to have established a goal but has not provided substantiating evidence.

g. **Question 7**

Offerors will be scored based upon the program and methods they developed to utilize MWBE suppliers, substantiate MWBE certification, and increase MWBE participants.

Robust (6 points) – The Offeror has established a program with substantial procedures for MWBE verification and outreach.

Moderate (4 points) - The Offeror has established a program with procedures for MWBE verification and outreach.

Minimum (2 points) - The Offeror has established a program with few procedures for MWBE verification and outreach.

No (0 points) – The Offeror has not established a program to utilize MWBE suppliers; or claims to have established a program but has not provided substantiating evidence.

h. **Question 8**

Offerors will be scored based upon their MWBE utilization plan designed to meet the Department's MWBE goal established for this procurement Section III.E.

Robust (5 points) – The Offeror’s utilization plan is designed to meet 100% of Department’s MWBE goal.

Moderate (3 points) - The Offeror’s utilization plan is designed to meet 75% of Department’s MWBE goal.

Minimum (1 point) - The Offeror’s utilization plan is designed to meet 50% of Department’s MWBE goal.

No (0 points) – The Offeror does not intend to enter into partnering or subcontracting agreements with New York State certified MWBEs; or does not provide any evidence of intent.

6. Technical Scoring

The Offerors’ Technical Proposal will be evaluated independently by multiple evaluators based on pre-established Evaluation Criteria. Individual scores will then be averaged. The average score for each response shall be applied to the points associated with each evaluated requirement such that an average score of “Excellent” for each evaluated requirement will result in a maximum of 1,000 points. The Offerors have the potential of earning an additional 100 points applied to their evaluated Technical Proposal based on their responses to the Diversity Practices Questionnaire, resulting in a maximum score of 1,100 points. The points associated with each evaluated requirement are totaled for each Offeror and will then be converted to a score such that the Offeror with the highest point total will receive a Technical Score of 700; the highest Technical Score. As calculated by the PPACA Compliance Services Procurement Manager, all other evaluated Technical Proposals will be awarded a Technical Score at a reduced level calculated in accordance with a pre-determined formula as set forth in the Evaluation Criteria. That formula calculates the Technical Score of the evaluated Technical Proposal based on the proportion of the point total of the evaluated Technical Proposal to the point total of the Technical Proposal with the highest point total. The awarded Technical Scores are calculated to the hundredth decimal place.

B. Cost Evaluation - 30% of Overall Score

The Cost Proposal of those Offerors that meet the Minimum Mandatory Requirements will be evaluated by the Department, and others as deemed appropriate by the Department. The Department will calculate a Cost Score for each Offeror based on the evaluated Total Program Cost for the five-year period, January 1, 2018 to December 31, 2022.

- 1) The evaluator will calculate the Total Program Cost for each Offeror using quoted fees from **Exhibits III.A and III.B** of the Offeror's Cost Proposal. The evaluation of Offerors' Cost Proposals shall be based on the sum of the of the Workforce Analytics Fee quoted for years one (1) through five (5) of the Contract and the Statutory IRS Reporting Fee quoted for years one (1) through five (5) of the Contract as calculated as follow:
 - a) The total evaluated Workforce Analytics Fee is determined as follows: (year one monthly fee x 12) + (year two monthly fee x 12) + (year three monthly fee x 12) + (year four monthly fee x 12) + (year five monthly fee x 12). plus
 - b) The Statutory IRS Reporting Fee will be evaluated by multiplying the proposed per-form fees by a normalized count of mailed forms as follows: (year one fee x normalized count) + (year two fee x normalized count) + (year three fee x normalized count) + (year four x normalized count) + (year five x normalized count).

2. The Department reserves the right to analyze and/or normalize. The Department reserves the right to make other cost calculation adjustments as necessary to determine the evaluated cost of each Offerors' Cost Proposal. Any such adjustments shall be made with the intent to evaluate each Offerors' Cost Proposal on a fair and consistent basis, without prejudice. These normalization adjustments may include, but are not limited to, any unforeseen circumstances whereby the normalization of specific factors among Offerors shall result in a more accurate and fair comparison of each Offeror's Cost Proposal.

3. A Cost Score for each Offeror will be determined based on the following formula, with the lowest Total Program Cost as calculated in accordance with Section VI.C. receiving the maximum points:

$$\text{Cost Score of Evaluated Proposal} = 300 \times \frac{\text{Lowest Evaluated Total Program Cost}}{\text{Total Program Cost of Proposal being evaluated}}$$

Scores will be calculated to the hundredth decimal place.

C. Total Combined Score of Technical and Cost

The results of the Technical and Cost evaluations as set forth in Sections VI.A and VI.B of this RFP will be added to calculate the Offeror's Total Combined Score. The Total Combined Score shall represent the Technical Score plus the Cost Score.

D. Best Value Determination

The Department shall select, and enter into negotiations for the purpose of executing a contract, with the responsive and responsible Offeror with the highest Total Combined Score. If an Offeror's Total Combined Score is equal to or less than one (1) point below the highest Total Combined Score, that Offeror's proposal will be determined to be substantially equivalent to the Offeror holding the highest Total Combined Score. Among any Offeror Proposals deemed substantially equivalent, the Department shall select the Offeror that has the highest Cost Score calculated pursuant to Section VI.B.3. of this RFP to enter into negotiations for the purpose of executing a contract.

Please note that the terms in Appendix A, Standard Clauses for All New York State Contracts, Appendix B, Standard Clauses for all Department Contracts, Appendix C, Third Party Connection and Data Exchange Agreement, C-1, Information Security Standards, 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 are **not** subject to negotiation.

If the Department determines that Contract negotiations between the Department and the selected Offeror are unsuccessful, the Department may invite the Offeror with the next highest Total Combined Score to enter into negotiations for purposes of executing a contract. Prior to negotiating with the Offeror with the next highest Total Combined Score, the Department will notify the Offeror originally selected and provide the date when negotiations shall cease should an agreement not be reached. Scores will not be recalculated for any remaining Offerors should Contract negotiations between the Department and the selected Offeror be unsuccessful because of material differences in key provision(s).

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–Information 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.

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 XVIX: 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: _____

SECTION VIII: GLOSSARY OF TERMS

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.

AG means the New York State Attorney General's Office.

Agreement or Contract means the Agreement entered into between the Parties resultant from this RFP.

Business Day(s) means Monday through Friday, except for those designated as Business Holidays.

Business Holiday(s) means legal Holidays observed by the State.

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

Commissioner means the Commissioner of the New York State Department of Civil Service.

Contract or Agreement means the Agreement entered into between the Parties resultant from this RFP.

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.

Day(s) means calendar Days unless otherwise noted.

Department or DCS means the New York State Department of Civil Service.

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.

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.

Employer means “Employer” as defined in 4 NYCRR Part 73, as amended.

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.

ET means prevailing Eastern Time.

HIPAA means Health Insurance Portability and Accountability Act of 1996, as amended.

Implementation Plan means an 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.

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.

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 Program Services over the term of the Agreement that results from this RFP, as well as any vendor who will provide Program Services in an amount lower than the \$100,000 threshold, and who is a part of the Contractor’s account team.

MWBE means Minority-and Women-Owned Business Enterprises.

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).

Normal Business Hours means Monday- Friday 8:00 a.m.- 5:00 p.m. ET, unless specified otherwise by the Department.

NYS or State means the State of New York (including the New York State Department of Civil Service).

Offeror means any responsible and eligible entity submitting a responsive Proposal to the RFP. It shall be understood that references in the RFP to "Offeror" shall include said entity's proposed Key Subcontractor or Affiliates, if any.

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

Plan means the Empire Plan

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

Project Services means the entire scope of services provided by the Contract in accordance with the terms and conditions set forth in the Contract, 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 the PPACA; 3) preparing and mailing Form 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-C and/or Form 1095-C copies) to the Internal Revenue Service.

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.

RFP or Procurement means the Request for Proposals, entitled "PPACA Compliance Services" dated April 13, 2018

Services means the PPACA Compliance Services to be provided by the Offeror as set forth in this RFP.

Service Level Standard means the Department's expected performance level of service that the selected Offeror must meet or exceed for the PPACA Compliance Services.

Software means computer instructions or data that can be stored electronically.

State means the State of New York.

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-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-C and/or Form 1095-C copies) to the Internal Revenue Service.

Student Employee Health Plan (SEHP) means a health insurance plan for graduate student employees of the State University of New York system that provides benefits through the various Empire Plan Insurance Contracts. Like the Empire Plan, the SEHP includes hospital, medical, managed mental health and substance abuse benefits, and prescription drug benefits. SEHP is administered by the New York State Department of Civil Service, Employee Benefits Division.

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.

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.

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

**PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.**

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STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this

contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of

any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this

contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00,

whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment

opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.

In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS.

Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded

the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at:
<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency 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 activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not

limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

APPENDIX B
STANDARD CLAUSES FOR ALL DEPARTMENT CONTRACTS

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1. INTEGRATION

The contract executed between the Department and the Contractor (or Purchase Order issued by the Department) is hereinafter referred to as the Agreement. The Agreement, including all Exhibits and Appendices, including this Appendix B, copies of which are attached thereto, and incorporated therein by reference, constitutes the entire agreement between the Parties for the purpose of the fulfillment of Program Services or Project Services. All prior agreements, representations, statements, negotiations and undertakings are superseded hereby.

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

2. EXECUTORY PROVISION

Section 112 of the State Finance Law requires that any contract made by a State department which exceeds fifty thousand dollars (\$50,000) in amount be first approved by the Comptroller of the State of New York before becoming effective. The Parties recognize that, if the Agreement is for fifty thousand dollars or more, it is wholly executory until and unless approved by the Comptroller of the State of New York.

3. CHOICE OF LAW

The Parties agree that the Agreement shall be interpreted according to the laws of the State of New York, except where the federal supremacy clause requires otherwise. The Contractor shall be required to bring any legal proceeding against the Department arising from the Agreement in New York State courts located in Albany County.

4. DISPUTE RESOLUTION

Except as otherwise provided in the Agreement, any dispute raised by the Contractor concerning any question of fact or law arising under the Agreement which is not disposed of by mutual agreement of the Parties shall be decided initially by the designee of the President of the Civil Service Commission (President). A copy of the written decision shall be furnished to the Contractor. The Parties shall proceed diligently with the performance of the Agreement and shall comply with the provisions of such decision and continue to comply pending further resolution of any such dispute as provided herein. The decision of the designee of the President shall be final and conclusive unless, within ten (10) Days from the receipt of such decision, the Contractor furnishes the President a written appeal. In the event of an appeal, the President shall promptly review the initial decision, and confirm, annul, or modify it. The decision of the President shall be final and conclusive unless, as determined by a court of competent jurisdiction, it violates one of the provisions of section 7803 of the Civil Practice Law and Rules. Pending final decision of any Article 78 proceeding hereunder, both Parties shall proceed diligently with the performance of the Agreement in accordance with the President's decision.

5. WAIVER OF BREACH

No term or provision of the Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. No consent by a Party to, or waiver of, a breach under the Agreement shall constitute a consent to, a waiver of, or excuse for any other, different or subsequent breach.

6. NEW YORK STATE REQUIREMENTS

The Contractor acknowledges that it is bound by the terms of Appendix A, Standard Clauses For All New York State Contracts, which is attached and incorporated by reference to the Agreement.

7. OUTSIDE OF SCOPE

The Contractor agrees that any and all work performed outside the scope of the Agreement shall be deemed to be gratuitous and not subject to any charge, cost or payment of any kind.

8. NON-ASSIGNABILITY

Neither the rights nor the obligations of the Contractor under the Agreement may be conveyed, assigned, delegated, or otherwise transferred in any manner whatsoever by the Contractor, either in whole or in part, without the prior written approval of the Department.

9. NOTIFICATION

All notices permitted or required by the Agreement to be given by one Party to the other shall be in writing and shall be transmitted either (1) via certified or registered mail, return receipt requested; (2) by facsimile transmission; (3) by personal delivery; (4) by expedited delivery service; or (5) by e-mail.

10. INDEMNIFICATION

The Contractor agrees to indemnify, defend and save harmless the Department, the State, its officers, agents and employees, for any claims or losses the Department, the State or any individuals may suffer when such claims or losses result from the claims of any person or organization for any and all injuries or damages caused by the negligent acts or omissions of the Contractor, its officers, employees, agents, consultants and/or sub-contractors in performance of the Agreement. Furthermore, the Contractor agrees to indemnify, defend and save harmless the Department and the State, its officers, agents, and employees from any and all claims or losses caused by the acts or omissions of any and all contractors, sub-contractors, consultants and any other persons, firms, or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of the Agreement and from all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of the Agreement, and against any loss, damages or actions, including, but not limited to, costs and expenses, for violation of proprietary rights, copyrights, patents, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use, or disposition of any material, information or data furnished under the Agreement, or based on any libelous or otherwise unlawful matter contained in such material, information or data, except as otherwise provided in the Article entitled "Patent Copyright or Proprietary Rights Infringement" of this Appendix B.

The Contractor also shall provide indemnification against all losses, and/or cost expenses (including reasonable counsel fees) that may be incurred by reason of the Contractor's breach of any term, provision, covenant, warranty, or representation contained herein and/or in connection with the enforcement of the Agreement or any provision hereof.

The Department does not agree to any indemnification provisions in any documents attached hereto that require the Department or the State of New York to indemnify or save harmless the Contractor or third parties.

Notwithstanding anything to the contrary in the Agreement, neither the Department nor the Contractor shall be liable to the other for any special, consequential, or punitive damages, or loss of profits or revenues, whether such damages are alleged as a result of tort (including strict liability), contract, warranty, or otherwise, arising out of or relating to either Party's acts or omissions under the Agreement.

11. PATENT, COPYRIGHT OR PROPRIETARY RIGHTS INFRINGEMENT

The Contractor, solely at its expense, shall defend any claim or suit which may be brought against the Department or the State for the infringement of United States patents, copyrights or proprietary rights arising from the Contractor's or the Department's use of any software, equipment, data, materials and/or information of any kind prepared, developed or furnished by the Contractor in connection with performance of the Agreement and, in any such suit, shall satisfy any final judgment for such infringement. The Department shall give the Contractor written notice for such claim or suit and full right and opportunity to conduct the defense thereof, together with full information and all reasonable cooperation.

If principles of governmental or public law are involved, the State of New York may participate in the defense of any action identified under this Article, but no costs or expenses shall be incurred upon the account of the Contractor without the Contractor's written consent.

If, in the Contractor's opinion, any software, equipment, data, materials and/or information prepared, developed or furnished by the Contractor is likely to or does become the subject of a claim of infringement of a United States patent, copyright or proprietary right, then, without diminishing the Contractor's obligation to satisfy any final award, the Contractor may, with the Department's prior written approval, substitute other equally suitable software, equipment, materials, data and/or information. In the event that an action at law or in equity is commenced against the Department arising out of a claim that the Department's use of any software, equipment, materials and/or information under the Agreement infringes on any patent, copyright, or proprietary right, such action shall be forwarded by the Department to the Contractor for defense and indemnification under this Article and to the Office of the Attorney General of the State of New York together with a copy of the Agreement. If upon receipt of such request for defense, or at any time thereafter, the Contractor is of the opinion that the allegations in such action, in whole or in part, are not covered by the defense and indemnification set forth herein, the Contractor shall immediately notify the Department and the Office of the Attorney General of the State of New York, in writing, and shall specify to what extent the Contractor believes it is and is not obligated to defend and indemnify under the terms and conditions of the Agreement. The Contractor shall in such event protect the interests of the State of New York and shall take the steps necessary to secure a continuance to permit the State of New York to appear and defend its interest in cooperation with the Contractor, as is appropriate, including any jurisdictional defenses which the State shall have.

12. DATE/TIME WARRANTY

The Contractor warrants that products furnished pursuant to the Agreement shall be able to accurately process, date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific products and/or services must perform as a package or system, this warranty shall apply to the products and/or services as a system.

Where the Contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g. billing, invoicing, claim processing), the Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure, or error due to the inaccuracy of the Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. The Contractor shall be responsible for damages resulting from any delays, errors, or untimely performance resulting there from, including but not limited to the failure or untimely performance of such services.

This Date/Time Warranty shall survive beyond termination or expiration of the Agreement through a) ninety (90) days or b) the Contractor's or product manufacturer/developer's stated date/time warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under the Agreement for breach of warranty.

13. VIRUS WARRANTY

Product contains no viruses, either known to the Contractor or which reasonably should have been known to the Contractor exercising due diligence. The Contractor is not responsible for viruses introduced at the Department's site.

14. TITLE AND OWNERSHIP WARRANTY

The Contractor warrants, represents and conveys (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver perpetual license rights to any Product(s) transferred to the Department under the Agreement. The Contractor shall be solely liable for any costs of acquisition associated therewith. The Department may require the Contractor to furnish appropriate written documentation establishing the above rights and interests as a condition of payment. The Department's request or failure to request such documentation shall not relieve the Contractor of liability under this warranty.

15. USE RESTRICTIONS AND INTELLECTUAL PROPERTY

The Parties agree that all work by the Contractor for the Department is intended as work for hire. The Parties agree that the Contractor's work is specifically ordered and commissioned for use as contributions to a collective work, or is other such work as specified by section 101(2) of the U.S. Copyright Act [17 U.S.C. 101(2)], and is intended to be a work for hire that is made for the use and ownership of the State of New York and the Department. Furthermore, the Department and the Contractor agree that the State of New York and the Department are the owners of all copyrights regarding the work. The Contractor warrants to the State of New York and the Department that the Contractor, and all of its subcontractors and their employees, who have been, or may be used in regard to the Agreement, forfeits all past or future claims of title or ownership to the work produced.

Materials such as forms and publications used by the Contractor in the course of its performance under the Agreement which have been agreed upon by the Parties as generic materials are specifically excluded from this provision.

16. OWNERSHIP/TITLE TO PRODUCT DELIVERABLES

For purposes of this Article, the term "Department" is understood to mean the Department acting on behalf of the State.

(A) Definitions

1. Product(s):

A deliverable furnished under the Agreement by or through the Contractor, including existing and custom Product(s), including, but not limited to: a) components of the hardware environment; b) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings); c) third party software; d) modifications, customizations, custom programs, program listings, programming tools, data, modules, components; and e) any properties embodied therein, whether in tangible or intangible form (including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, source code, object code).

2. Existing Product(s):

Tangible Product(s) and intangible licensed Product(s) which exist prior to the commencement of work under the Agreement. The Contractor retains the burden of proving that a particular product existed before commencement of the Agreement.

3. Custom Product(s):

Product(s), preliminary, final or otherwise, which are created or developed by the Contractor, or its subcontractors, partners, employees, or agents under the Agreement for the benefit of the Department.

(B) Title to Project Deliverables

The Contractor acknowledges that it is commissioned by the Department to perform services detailed in the Agreement. Unless otherwise specified in writing in the Agreement, the Department shall have ownership and/or license rights as follows:

1. Existing Product(s):

a) Hardware - Title and ownership of Existing Hardware Product shall pass to Department upon acceptance.

b) Software - Title and ownership to Existing Software Product(s) delivered by the Contractor under the Agreement which is normally commercially distributed on a license basis by the Contractor or other independent software vendor/proprietary owner ("Existing Licensed Product"), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with the Contractor or other independent software vendor/proprietary owner ("ISV"). Effective upon acceptance, such Product shall be licensed to the Department in accordance with the Contractor or ISV owner's standard license agreement, provided, however, that such standard license, must, at a minimum: (a) grant the Department a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless the Contractor advises the Department as part of the Contractor's bid proposal that adaptation will violate existing agreements or statutes and the Contractor demonstrates such to the Department's satisfaction) and distribute Existing Licensed Product to the Department up to the license capacity stated in the work order with all license rights necessary to fully effect the general business purpose(s) stated in the Agreement and (b) recognize the State of New York as the licensee. Where these rights are not otherwise covered by the ISV's standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense. The Department shall reproduce all copyright notices and any other legend of ownership on any copies authorized under this paragraph.

2. Custom Product(s):

Effective upon creation of Custom Product(s), the Contractor hereby conveys, assigns and transfers to State the sole and exclusive rights, title and interest in Custom Product(s), whether preliminary, final or otherwise, including all trademark and copyrights. The Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Product(s) are protected against unauthorized copying, reproduction and marketing by or through the Contractor, its agents, employees, or subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under the Agreement in the course of the Contractor's business.

Where payment for Custom Product does not involve Certificates of Participation (COPS) pursuant to Article 5-A of the State Finance Law or other third party

financing, the Department may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of State taking exclusive ownership and title to such Products. In such case, the Department shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purpose(s) as stated herein.

In the event that the Contractor wishes to obtain ownership rights to Custom Product(s), the sale or other transfer shall be at fair market value as determined by the Parties at the time of such sale or other transfer, and must be pursuant to a separate written agreement in a form acceptable to the State which complies with the terms of this paragraph.

3. Documentation, Data & Reports

The Department shall own title to all documentation, drawings, (e.g., engineering drawings, system diagrams, logic/schematics, plans, reports, training, maintenance or operating manuals), including network design, equipment configurations and other documentation prepared or developed pursuant to the Agreement, whether preliminary, final or otherwise. The Contractor shall deliver to the possession of the Department all work-in-progress documentation as it becomes available, but in no case longer than thirty (30) days after creation.

17. FORCE MAJEURE

Neither Party to the Agreement shall be liable or deemed to be in default for any delay or failure in performance under the Agreement resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, wars, riots, civil disturbances, insurrections, accident, fire, explosions, earthquakes, floods, the elements, acts or omissions of public utilities or strikes, work stoppages, slowdowns or other labor interruptions due to labor/management disputes involving entities other than the Parties to the Agreement, or any other causes not reasonably foreseeable or beyond the control of a Party. The Parties are required to use best efforts to eliminate or minimize the effect of such events during performance of the Agreement and to resume performance of the Agreement upon termination or cessation of such events.

18. TIME OF THE ESSENCE

The Department and the Contractor acknowledge and agree that time is of the essence for the Contractor's performance under the Agreement.

19. RIGHTS AND REMEDIES

The rights, duties and remedies set forth in the Agreement shall be in addition to, and not in limitation of, rights and obligations otherwise available at law.

20. FEDERAL AND STATE COMPLIANCE

The Contractor shall ensure that its employment practices comply with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended.

The Contractor shall ensure compliance with the Americans With Disabilities Act (42 USC §2101 et. seq.) such that programs and services provided during the course of performance of the Agreement shall be accessible under Title II of the Americans With Disabilities Act and as otherwise applicable under the Americans With Disabilities Act.

21. TAXES

It shall be understood that the Department, as an agency of the State of New York, is not liable for the payment of any sales, use, excise, or other form of tax however designated, levied or imposed, and shall agree to reimburse the Contractor for same only if taxes would have been incurred through the Department's normal business operations.

22. INDEPENDENT CONTRACTOR

The Parties agree that the Contractor is an independent contractor, and the Contractor, its officers, employees, agents, consultants and/or sub-contractors in the performance of the Agreement shall act in an independent capacity and not as agents, officers or employees of the State or the Department. Neither the Contractor nor any sub-contractor shall thereby be deemed an agent, officer, or employee of the State. The Contractor agrees, during the term of the Agreement, to maintain at the Contractor's expense those benefits to which its employees would otherwise be entitled by law, including health benefits, and all necessary insurance for its employees, including worker's compensation, disability and unemployment insurance, and to provide the Department with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, State, and local taxes, and all FICA contributions.

23. NO THIRD PARTY BENEFICIARIES

Nothing contained in the Agreement, expressed or implied, is intended to confer upon any person, corporation, other than the Parties hereto and their successors in interest and assigns, any rights or remedies under or by reason of the Agreement.

24. HEADINGS OR CAPTIONS

The headings or captions contained within the Agreement are intended solely for convenience and reference purposes and shall in no way be deemed to define, limit or describe the scope or intent of the Agreement or any provisions thereof.

25. PARTIAL INVALIDITY

Each Party agrees that it shall perform its obligations under the Agreement in accordance with all applicable federal and State laws, rules, and regulations, policies and/or guidelines now or hereafter in effect. If any term or provision of the Agreement shall be found to be illegal or unenforceable, then, notwithstanding such term or provision, the Agreement shall remain in full force and effect, and such term or provision shall be deemed stricken.

26. CONFLICT OF INTEREST

The Contractor shall ensure that its officers, employees, agents, consultants and/or sub-contractors comply with the requirements of the New York State Public Officers Law ("POL"), as amended, including but not limited to sections 73 and 74, as amended, with regard to ethical standards applicable to State employees, and particularly POL sections 73(8)(a)(i) and (ii) regarding post-employment restrictions affecting former State employees. Additionally, the Contractor shall ensure that no violation of these provisions will occur by reason of the Contractor's proposal for or negotiation and execution of the Agreement or in its delivery of services pursuant to the Agreement. If, during the term of the Agreement, the Contractor becomes aware of a relationship, actual or potential, which may be considered a violation of the POL or which may otherwise be considered a conflict of interest, the Contractor shall notify the Department in writing immediately. Should the Department thereafter determine that such employment is inconsistent with State law; the Department shall so advise the Contractor in writing, specifying its basis for so determining, and may require that the contractual or employment relationship be canceled. Failure to comply with these provisions may result in suspension or cancellation of the Agreement and criminal proceedings as may be required by law.

The Contractor is required to make full disclosure of any circumstances that could affect its ability to perform in complete compliance with the POL. Any questions as to the applicability of these provisions should be addressed by the Contractor to the New York State Ethics Commission, 540 Broadway, Albany, NY 12207 (518) 408-3976.

27. AUDIT AUTHORITY

The Contractor acknowledges that the Department and the Office of the State Comptroller have the authority to conduct financial and performance audits of the Contractor's delivery of Program Services (or Project Services) in accordance with the Agreement and any applicable State and federal statutory and regulatory authorities. Such audit activity may include, but not necessarily be limited to, the review of documentary evidence to determine the accuracy and fairness of all items on the Contractor's submission of claims for payment under the Agreement, and the review of any and all activities relating to the Contractor's performance and administration of the Agreement.

The Contractor shall make available documentary evidence necessary to perform such reviews. Documentation 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 and pertinent contracts and correspondence.

The audit provisions contained herein shall in no way be construed to limit the audit authority or audit scope of the Office of the State Comptroller as set forth in Appendix A of the Agreement - Standards Clauses for All New York State Contracts.

28. CONFIDENTIALITY

All records maintained by the Contractor and relating to the Agreement are confidential and shall be used by the Contractor and its officers, employees, and subcontractors or agents solely for the purpose of carrying out its obligations under the Agreement. Except as directed by a court of competent jurisdiction or as may be permitted or required by applicable New York State or federal law or regulations, no such records may be otherwise used or released to any person by the Contractor, its employees, subcontractors or agents, 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.

The Contractor shall promptly advise the Department of all requests made to the Contractor for information regarding the performance of services under the Agreement, including any information provided by the Department, except as required by subcontractors or agents solely for the purpose of carrying out obligations under the Agreement or as required by law.

The Contractor shall be responsible for assuring that any agreement between the Contractor and any of its officers, agents and employees or applicable subcontractors contains a provision that conforms strictly to the provisions of this Article.

29. INFORMATION SECURITY REQUIREMENTS

In accordance with the Information Security Breach and Notification Act (ISBNA) (General Business Law §889-aa, State Technology Law §208), Contractor shall be responsible for complying with provisions of the ISBNA and the following terms contained herein with respect to any private information (as defined in ISBNA) received by Contractor under the Agreement (Private Information) that is within the control of the Contractor either on the Department's information security systems or the Contractor's information security system (System). In the event of a breach of the security of the System (as defined by ISBNA),

Contractor shall immediately commence an investigation, in cooperation with the Department, to determine the scope of the breach and restore security of the System to prevent any further breaches. Contractor shall also notify the Department of any breach of the security of the System immediately following discovery of such breach.

Except as otherwise instructed by the Department, Contractor shall, to the fullest extent possible, first consult with and receive authorization from the Department prior to notifying any individuals, the State Office of Information Technology Services (ITS), the State Consumer Protection Board and the Office of the Attorney General (OAG) or any consumer reporting agencies of a breach of the security of the System or concerning any determination to delay notification due to law enforcement investigations. Contractor shall be responsible for providing the notice to all such required recipients and for all the costs associated with providing such notice. Contractor shall be liable for any other costs associated with noncompliance of ISBNA if caused by the Contractor or Contractor's agents, officers, employees, or subcontractors. Nothing herein shall in any way impair the authority of the OAG to bring an action against the Contractor to enforce the provisions of ISBNA or limit Contractor's liability for any violation of the ISBNA. Additional information relative to the law and the notification process is available at:

<http://www.cscic.state.ny.us/security/securitybreach>

Contemporaneous with the execution of the Agreement, the Contractor and its designees shall execute the Department's Third Party Connection and Data Exchange Agreement and any other protocol required by the Department, and shall ensure its employees, agents and designees complete the related Third Party Acceptable Use Policy and Agreement if applicable, to ensure the security of data transmissions and other information related to the administration of the Agreement. This request may be waived by the Department in its sole discretion.

30. NONDISCLOSURE OF CONFIDENTIAL INFORMATION

Except as may be required by applicable law or a court of competent jurisdiction, the Contractor, its officers, agents, employees, and subcontractors shall maintain strict confidence with respect to any Confidential Information to which the Contractor, its officers, agents, employees, and subcontractors have access in the course of the Contractor's performance under the Agreement. For purposes of the Agreement, all State information of which the Contractor, its officers, agents, employees and subcontractors becomes aware during the course of performing services for the Department shall be deemed to be Confidential Information (oral, visual or written). Notwithstanding the foregoing, information that falls into any of the following categories shall not be considered Confidential Information:

- (a) information that is previously rightfully known to the receiving party without restriction on disclosure;
- (b) information that becomes, from no act or failure to act on the part of the receiving party, generally known in the relevant industry or is in the public domain; and
- (c) information that is independently developed by the Contractor without use of confidential information of the State.

The Contractor shall hold the State and the Department harmless from any loss or damage to the State or the Department resulting from the disclosure by the Contractor, its officers, agents, employees, and subcontractors of such Confidential Information.

The Contractor shall provide for its officers, agents, employees, and subcontractors to acknowledge and execute a nondisclosure agreement containing substantially the terms described in this Article, if requested to do so by the Department or the State.

This representation shall survive termination of the Agreement.

31. FREEDOM OF INFORMATION LAW

Disclosure of information and material provided to the Department by the Contractor in the course of the Contractor's performance under the Agreement shall be permitted consistent with the laws of the State of New York, and specifically the Freedom of Information Law (FOIL), Article 6 of the Public Officers Law. The Department shall take reasonable steps to protect from public disclosure any of the records relating to the Contractor's performance under the Agreement that otherwise are exempt from disclosure under FOIL.

If the Contractor believes that any information or material provided to the Department constitutes trade secret information that should be exempted from FOIL disclosure, the Contractor must, at the time of the materials' submission, request the exemption in writing, specifically identifying the material by page number, line, or other appropriate designation, and provide a particularized explanation as to why the material constitutes trade secret information and how the disclosure of the identified information would cause substantial injury to the Contractor's competitive position. The material sought to be protected from disclosure must be clearly marked in yellow highlighter, on a duplicate copy of the submission and may be provided in hardcopy or on a CD. Generically marking all material as "Confidential" will not be considered adequate for the purpose of this Article.

The Department's receipt of the Contractor's submission of material and the Contractor's request for protection of the material from FOIL disclosure does not constitute a determination that the information is exempt from disclosure under FOIL. In the event any information or material is requested pursuant to FOIL, the Department will address each party's interests fully in accordance with the procedures required by Article 6 of the Public Officers Law.

32. TERMINATION OF AGREEMENT

In addition to any termination provisions specified elsewhere in the Agreement, the following provisions also shall apply:

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

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

The Agreement may be terminated if the Department deems that termination would be in the best interest of the State provided that the Department shall give written notice to the Contractor not less than thirty (30) Days prior to the date upon which termination shall become effective, such notice to be made via registered or certified mail, return receipt requested or hand delivered. The date of such notice shall be deemed to be the date of postmark in the case of mail or the date of hand delivery.

The Agreement may be terminated immediately in the event the Department determines that funds are unavailable. The Department agrees to provide notice to the Contractor as soon as it becomes aware that funds are unavailable in the event of termination under this paragraph. If the initial notice is via oral notification, the Department shall provide written notice immediately thereafter. The Department shall be obligated to pay the Contractor only for the expenditures made and obligations incurred by the Contractor until such time as notice of termination or received either orally or in writing by the Contractor from the Department.

In the event of termination for any reason, the Contractor shall not incur new obligations for the terminated portion. The Contractor agrees, after consultation with the Department, to cancel such outstanding obligations as the Contractor deems appropriate in the exercise of sound business judgment.

Upon termination of the Agreement each Party shall, if applicable, return to the other all papers, materials, and other properties of the other Party held by each for purposes of performance under the Agreement. In addition, each Party shall assist the other Party in orderly termination of the Agreement and the transfer of all aspects hereof, tangible, and intangible, as may be necessary to ensure the orderly administration of the State program.

33. CONTRACTOR PERSONNEL

The Contractor shall designate an Account Executive, who shall be the contact person for all matters arising under the Agreement.

The Contractor agrees to be solely responsible for the recruitment, hiring, provision of employment benefits, payment of salaries, and management of its personnel. These functions shall be carried out by the Contractor in accordance with the provisions of the Agreement and with all applicable federal and State laws and regulations.

The Contractor is required to commit key personnel for the administration of all aspects of the Agreement. In the event that any of the key personnel will be or are unavailable for the performance of their duties, the Contractor will designate and propose to the Department an equally qualified alternate with full authority to act for the unavailable key person.

The Contractor shall notify the Department in writing of any changes in the key personnel designated for performance of the Agreement. This shall include any changes in the personnel designated to bind the Contractor.

The Department reserves the right to demand the reassignment or cancellation of assignment to duties under the Agreement of any Contractor personnel so assigned. The Department shall not exercise the authority unreasonably. The Contractor agrees to replace any employees so reassigned or canceled with an employee of equal or better qualifications. If the Department exercises its right under this provision, it agrees to provide written notice to the Contractor setting forth its reasons with specificity.

34. OPERATIONAL CONTACTS

The Contractor shall maintain appropriate corporate and/or legal authority, which shall include, but not be limited to, the maintenance of an organization capable of delivering 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 Program Services are to be delivered pursuant to the Agreement. The Contractor also shall maintain operations, financial and legal staff that shall be directly available to the Department's operations, financial and legal staff, respectively. For purposes of the Agreement, maintenance of such staff and staff availability by the Contractor shall in no way create any agency relationship between the Department and the Contractor.

The Contractor acknowledges and agrees that no aspect of the Contractor's performance under the Agreement is contingent upon Department personnel or the availability of Department resources, with the exception of all proposed actions of the Contractor specifically identified in the Agreement as requiring the Department approval. With respect to such approval, the Department shall act promptly and in good faith.

The Contractor must cooperate fully with any other contractors who may be engaged by the Department relative to the the Agreement.

The Contractor must ensure that all contacts by the Contractor personnel with other New York State agencies, external organizations (Federal Agencies, Unions, etc.) which result in any charge, cost or payment of any kind, must receive prior written authorization from the Department's Contract Manager.

35. SUBCONTRACTING

If allowed in the solicitation instrument (e.g., Request for Proposal, Invitation for Bids, etc.) that results in the Agreement, the Contractor may arrange for specified portion(s) of its responsibilities under the Agreement to be subcontracted to a Key Subcontractor(s). A "Key Subcontractor" means that vendor(s) with whom the Contractor subcontracts to provide any portion of Program Services. If the Contractor determines to subcontract a portion(s) of Program Services, the Key Subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance under the Agreement must be fully explained by the Contractor to the Department. The Contractor retains ultimate responsibility for all Program Services performed under the Agreement.

All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of the Agreement including, but not be limited to, the body of the Agreement, Appendix A - Standard Clauses For All New York State Contracts, Appendix B - Standard Clauses for All Department Contracts and if applicable as determined by the Department, Appendix C - Third Party Connection and Data Exchange Agreement. Unless waived in writing by the Department, all subcontracts between the Contractor and a Key Subcontractor shall expressly name the State of New York, through the Department, as the sole intended third party beneficiary of such subcontract. The Department reserves the right to review and approve or reject any subcontract with a Key Subcontractor, as well as any amendments to said subcontract(s), and this right shall not make the Department or the State of New York a party to any subcontract or create any right, claim, or interest in the Key Subcontractor or proposed Key Subcontractor against the Department.

The Department reserves the right, at any time during the term of the Agreement, to verify that the written subcontract between the Contractor and Key Subcontractor(s) is in compliance with all of the provision of this Article and any subcontract provisions contained in the Agreement. In addition to other remedies allowed by law, the Department reserves the right to terminate the Agreement for cause if an executed subcontract does not contain all of the provisions/statements stipulated above. If during the term of the Agreement, any executed subcontract between the Contractor and a Key Subcontractor is amended, the Contractor shall, within 30 calendar days of such amendment, provide a copy to the Department.

The Contractor shall give the Department immediate notice in writing of the initiation of any legal action or suit which relates in any way to a subcontract with a Key Subcontractor or which may affect the performance of the Contractor's duties under the Agreement. Any subcontract shall not relieve the Contractor in any way of any responsibility, duty and/or obligation of the Agreement.

36. PUBLICITY AND COMMUNICATIONS

The Contractor shall ensure that all requests for the Contractor's participation in events where the Contractor will be participating on behalf of the Department receive prior written authorization from the Department.

No public discussion or news releases relating to the Agreement shall be made or authorized by the Contractor or the Contractor's agent without the prior written approval of the Department, which written approval shall not be unreasonably withheld or delayed provided, however, that Contractor shall be authorized to provide copies of the Agreement and answer any questions relating thereto to any State or federal regulators or, in connection with its financial activities, to financial institutions for any private or public offering.

37. CONSULTANT DISCLOSURE REQUIREMENTS

Unless directed otherwise by the Department, the Contractor shall demonstrate its compliance with Chapter 10 of the Laws of 2006 throughout the term of the Agreement by submitting to the Department and to the Office of the State Comptroller a "State Consultant Services - Contractor's Annual Employment Report" for each State Fiscal Year. Such report shall be due no later than May 15th of each year following the end of the State Fiscal Year being reported. Such report shall be required of any contract that includes services for analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health and mental health services, accounting, auditing, paralegal, legal, or similar services. Such report shall conform with Bulletin No. G-226 - Form B as issued by the Office of the State Comptroller. The report must be submitted to the Office of the State Comptroller, Bureau of Contracts, 110 State Street, 11th floor, Albany, NY 12236, ATTN: Consultant Reporting; and to the Department's Contract Manager.

38. PROCUREMENT LOBBYING RESTRICTIONS UNDER STATE FINANCE LAW SECTIONS 139-j AND 139-k

The Contractor certifies that all information that it has provided or will provide to the Department pursuant to State Finance Law sections 139-j and 139-k is complete, true, and accurate, including but not limited to information regarding prior determinations of non-responsibility within the past four years based upon (i) impermissible contacts of other violations of SFL section 139-j, or (ii) the intentional provision of false or incomplete information to a governmental entity.

The Department reserves the right to terminate the Agreement in the event it is found that the Contractor's certification of its compliance with SFL sections 139-j or 139-k was intentionally false or intentionally incomplete. Upon such finding, the Department may exercise its right to terminate the Agreement by providing written notification to the Contractor in accordance with Article 9 of this Appendix B.

39. VENDOR RESPONSIBILITY

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.

40. TAX LAW SECTION 5-A - CERTIFICATION REGARDING SALES AND COMPENSATING USE TAXES

In the event the value of the Agreement exceeds \$100,000, the Contractor must file a properly completed Form ST-220-CA with the Department and a properly completed Form ST-220-TD with the Department of Taxation & Finance before the Agreement may take effect.

In addition, after the Agreement has taken effect, the Contractor must file a properly completed Form ST-220-CA with the Department if the Agreement's term is renewed; further, a new Form ST-220-TD must be filed with the Department of Taxation & Finance if no ST-220-TD has been filed by the Contractor or if a previously filed Form ST-220-TD is no longer correct and complete.

41. CONTRACT PAYMENT

Contractor shall provide complete and accurate billing invoices to the Department in order to receive payment. Billing invoices submitted to the Department must contain all information and supporting documentation required by the Agreement, the Department and the State Comptroller. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at www.osc.state.ny.us/epay/index.htm, by e-mail at epunit@osc.state.ny.us, or by telephone at 518-474-4032. Contractor acknowledges that it will not receive payment on any invoices submitted under the Agreement if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

May 2011



THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT

THIS AGREEMENT (the “Agreement”) by and between the NYS Department of Civil Service (“DCS”), with principal offices in Albany, NY 12239, and

with principal offices at

(hereinafter “Third Party”), is entered into as of the date last written below (“the Effective Date”).

This Agreement consists of this signature page and the following attachments incorporated by reference:

- 1. Attachment 1: Third Party Connection and Data Exchange Agreement Terms and Conditions
- 2. Attachment 2: Third Party Connection and Data Exchange Request Requirements Document
- 3. Attachment 3: Third Party Acceptable Use Policy and Agreement
- 4. Attachment 4: DCS Equipment Loan Agreement (Applicable: Yes No)

This Agreement may only be modified by a written document executed by the parties hereto. Any disputes arising out of or in connection with this Agreement shall be governed by New York State law without regard to choice of law provisions.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed. Each party warrants and represents that its respective signatories whose signatures appear below have been and are on the date of signature duly authorized to execute this Agreement.

<i>Third Party Name:</i>	<i>NYS Department of Civil Service (DCS)</i>
Authorized Signature	Authorized Signature
Name (<i>Print</i>)	Name (<i>Print</i>)
Date	Date



THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT

ATTACHMENT 1 – SECURITY REQUIREMENTS

1. *Right to Use Connection*

Third Party may only use the connection and the information obtained from DCS for business purposes as outlined by the Third Party Connection and Data Exchange Request Requirements Document (Attachment 2).

2. *Data Exchange*

2.1 Third Party may only use the data obtained for purposes outlined by the Third Party Connection and Data Exchange Request Requirements Document (Attachment 2) and the contract or Memoranda of Understanding, if any, that exists between DCS and Third Party for the provision of goods or services or governing conduct between DCS and Third Party with respect to the access to and use of DCS data.

2.2 Data exchange may be conducted only by methods and/or services outlined by the Third Party Connection and Data Exchange Request Requirements Document (Attachment 2). Third Party should expect that access to information and services may be limited, as determined or required by DCS.

3. *Network Security*

3.1 Third Party will allow only its own employees approved in advance by DCS (“Third Party Users”) to access the Network Connection or any DCS-owned equipment. Third Party shall be solely responsible for ensuring that Third Party Users are not security risks, and upon DCS’ request, Third Party will provide DCS with any information reasonably necessary for DCS to evaluate security issues relating to any Third Party User.

3.2 Third Party will promptly notify DCS whenever any Third Party User leaves Third Party’s employ or no longer requires access to the connection or DCS-owned Equipment.

3.3 Each Party will be solely responsible for the selection, implementation, and maintenance of security procedures and policies that are sufficient to ensure that (a) such party’s use of the connection (and Third Party’s use of DCS-owned Equipment) is secure and is used only for authorized purposes, and (b) such Party’s business records and data are protected against improper access, use, loss alteration or destruction.

3.4 The preferred connectivity method is via the Internet to a DCS-approved or DCS-provided Virtual Private Network (VPN) device. If the device is DCS-provided, DCS will loan the Third Party, in accordance with the DCS Equipment Loan Agreement, the required client software for establishing VPN connections with DCS. Normal DCS perimeter security measures will control access to the internal network.

3.5 Extranet – Designated routers are used in combination with firewall rules to allow access to be managed. A second authentication may be required.



- 3.6 Remote Access - Using the DCS-provided remote access software, Third Party will connect via an Internet browser. The account may be disabled until usage is required and controls are placed and managed by DCS. Third Party will be required to follow procedures to enable the account for each use.
- 3.7 Third Party Connections will be audited. All remote access user accounts for Third Parties will be given an expiration time. Renewals must be requested by Third Party and approved by the Department Sponsor. Obsolete Third Party connections will be terminated.
- 3.8 Software versions on all Third Party computers that connect to the DCS network must be versions that are currently supported by the software manufacturer, and all available security updates and hot fixes for that software must be applied in a timely fashion. Software and firmware for all Third Party networking equipment that is part of the connection to the DCS network must be kept up to date, especially with patches that fix security vulnerabilities.
- 3.9 Anti-virus software and firewalls must be installed and enabled at all times on DCS-owned computers and on Third Party computers that connect to the DCS network. Additionally, virus definition files must be kept up to date.
- 3.10 In no case may a Third Party Connection to DCS be used as an Internet Connection for Third Party or for a Third Party User.

4. Notifications

- 4.1 Third Party shall notify DCS in writing promptly of any change in its Users for the work performed over the Network Connection or whenever Third Party believes a change in the connection and/or functional requirements of the connection is necessary.
- 4.2 Any notices required by this Agreement shall be given in hand, sent by first class mail, or via facsimile to the applicable address set forth below.

Third Party Name:	NYS Department of Civil Service Albany, New York 12239
Address:	
Attention:	Attention:



5. *Citizen Notifications*

If Third Party maintains "identifying personal information" on behalf of the Department and such information is compromised, Third Party shall notify the Department immediately that the information has been compromised, the circumstances under which the information was compromised, and the measures undertaken by Third Party to address those circumstances and to otherwise mitigate the effects of the compromise. If encrypted data is compromised along with the corresponding encryption key and encryption software, the data shall be considered unencrypted and the information will be considered compromised through unauthorized access. If the Department requests Third Party to do so, Third Party shall notify the persons whose identifying information was compromised. Such notification shall be communicated via postal service or email, as directed by the Department, and shall otherwise be executed in accordance with the Department's direction. Notification shall be delayed if a law enforcement agency determines that such notification may impede a criminal investigation. For the purpose of this section, "identifying personal information" shall be any information concerning an individual which, because of name, number, symbol, mark or other identifier in combination with any of the following, is unencrypted: (1) Social Security Number; or (2) driver's license number; or (3) financial account number, credit or debit card number, in combination with any required security code, access code, or password which would permit access to an individual's financial account; or (4) password which would permit access to the individual's account.

6. *Payment of Costs*

Each Party will be responsible for all costs incurred by that Party under this Agreement, including, without limitation, costs for phone charges, telecommunications equipment and personnel for maintaining the connection.

7. *Confidentiality*

- 7.1 Information exchanged for the business purposes outlined in Attachment 2 will be held confidential by the Parties to the maximum extent permitted by law. Each Party may internally use the information received from the other Party hereunder in connection with and as specifically necessary to accomplish the Business Purpose set forth in Attachment 2 and for no other purposes. Each Party may otherwise share such information with other third parties (e.g. consultants, subcontractors, control agencies) as required or permitted by law in order to effect the business purposes outlined in Attachment 2 and for no other purposes, provided that such third parties agree to the confidentiality restrictions set forth herein and as may be required otherwise by State and federal law.
- 7.2 Third Party must implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the sensitive information that it creates, receives, maintains, or transmits on behalf of DCS.
- 7.3 Unencrypted DCS information must not be transmitted over email.
- 7.4 Third Party must ensure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect it and report to the ITS Enterprise Service Desk any security incident of which it becomes aware.



8. *Third Party Users*

- 8.1 Third Party must require that each Third Party User executes a Third Party Acceptable Use Policy and Agreement (Attachment 3). Third Party must ensure that DCS is notified by fax or mail when the user base changes, following the specifications in the Third Party Connection & Data Exchange Agreement.
- 8.2 All aspects of Third Party connections within DCS control may be monitored by the appropriate DCS support group and/or the DCS Information Security Officer. Any unauthorized use or change to devices will be investigated immediately.
- 8.3 All Third Party Connections will be reviewed on a regular basis and information regarding specific Third Party connection will be updated as necessary. Obsolete Third Party connections will be terminated.

9. *DCS-owned Equipment*

- 9.1 DCS may, in DCS' sole discretion, loan to Third Party certain equipment and/or software for use on Third Party premises (the DCS-owned Equipment) under the terms of the DCS Equipment Loan Agreement set forth in Attachment 4. DCS-owned equipment will only be configured for TCP/IP, and will be used solely by Third Party on Third Party's premises or other locations authorized by DCS for the purposes set forth in this Agreement. DCS is responsible for ensuring that it has the right under applicable software licenses to permit third party use.
- 9.2 Third Party may modify the configuration of the DCS-owned equipment only after notification and approval in writing by authorized DCS personnel.
- 9.3 Third Party will not change or delete any passwords set on DCS-owned equipment without prior approval by authorized DCS personnel. Promptly upon any such change, Third Party shall provide DCS with such changed password.

10. *Term, Termination and Survival*

- 10.1 This Agreement will remain in effect until terminated by either Party, but in no event prior to the termination or expiration of any contract or agreement between the Parties for the purchase of goods or services that provides the business purpose for the exchange of data between the Parties, unless both Parties mutually agree to so terminate this Agreement.
- 10.2 Upon termination, Third Party shall return all tangible DCS data to DCS within a timeframe specified by DCS for that purpose, and further shall certify in writing to DCS that all other DCS data in whatever form has been destroyed. Additionally, any DCS-owned equipment and/or software shall be promptly returned to DCS at Third Party's expense.
- 10.3 Notwithstanding the above, the Parties' obligations to safeguard the confidentiality of the data subject to this Agreement shall survive the termination of this Agreement, and shall bind the Parties' employees, subcontractors, agents, heirs, successors and assigns.



11. Severability

If for any reason a court of competent jurisdiction finds any provision or portion of this Agreement to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to affect the intent of the Parties, and the remainder of this Agreement will continue in full force and effect.

12. Waiver

The failure of any Party to enforce any of the provisions of this Agreement will not be construed to be a waiver of the right of such Party thereafter to enforce such provisions.

13. Assignment

Third Party may not assign this Agreement, in whole or in part, without the prior written consent from DCS. Any attempt to assign this Agreement, without such consent, will be null and of no effect. Subject to the foregoing, this Agreement is for the benefit of and will be binding upon the parties' respective successors and permitted assigns.

14. Force Majeure

Neither Party will be liable for any failure to perform its obligations if such failure results from any act of God or other cause beyond such Party's reasonable control (including, without limitation, any mechanical, electronic or communications failure) which prevents such party from transmitting or receiving any data.

15. Partial Invalidity

If this Agreement is entered into as a consequence of Third Party's provision of goods or services to DCS pursuant to a contract or other written agreement, that Agreement supersedes this Agreement to the extent the agreements' provisions may be inconsistent.



THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT

ATTACHMENT 2 – REQUEST REQUIREMENTS

In accordance with the DCS *Third Party Connection and Data Exchange Policy*, all requests for Third Party connections and data exchanges must be accompanied by this completed requirements document. This document should be completed by the DCS person or group requesting the Third Party connection and/or data exchange. The DCS Department Sponsor must be the Director of the Division whose business requires the Third Party connection and/or data exchange. DCS Divisions are encouraged to work with their IRM Liaison to complete the information in this document.

Part 1 – Business Justification

A. DCS Sponsor (*Division Director*)

Name:

David Boland

Division:

Employee Benefits Division

Office Location:

NYS Department of Civil Service
Albany, New York 12239

Phone Number:

518-473-1977

Email Address:

David.Boland@cs.ny.gov

Back-up Point of Contact: (Data Custodian)

Name:

Barbara Vaughn

Division:

Employee Benefits Division

Office Location:

NYS Department of Civil Service
Albany, New York 12239

Phone Number:

518-549-2328

Email Address:

Barbara.Vaughn@cs.state.ny.us

B. Business Reason for Connection (*To be completed by Sponsor*)

State the purpose of establishing the connection and the purpose of the data transmission. Specify the business needs of the proposed connection. Use additional sheets of paper if needed.



C. Specify the details of the work to be accomplished via the connection. What applications will be used? What information will be used? What transactions will be accomplished?

Enrollment files from NYBEAS will be transmitted to *[Insert Contractor Name]* via an SFTP connection. Limited *[Insert Contractor Name]* staff has inquiry access to NYBEAS to verify NYSHIP enrollment in *[Insert Contractor Name]*. The enrollment information is used by *[Insert Contractor Name]* to determine eligibility for benefits under the NYSHIP and to provide benefits to enrolled members.

D. Specify the Third Party Controls to be Implemented for Safeguarding DCS Data:

Access Controls:

Audit Controls:

Working procedures or practices for handling printed material and verbal exchanges:

Method of Disposal of media and paper:

User Account Management, including review of accounts:

Physical Security:

Other:

E. Estimated number of hours of use each week?

1 – 20

21 – 40

More than 40 hours per week

F. Anticipated normal hours of use?

M – F, 8:00 – 5:00 pm Eastern time

Other (specify):

G. What is the requested installation date? (Minimum lead-time is 30 days)

H. Approximately how long will the connection be needed?



- Up to 6 months
- 6 – 12 months
- More than 12 months
- Specific time period:

Note: If a connection is needed for more than a year, the Connection Agreement must be renewed annually.

I. Other useful information

J. Third Party Information

Name of Third Party: Main Phone Number:

Main Office Address:

Management Contact

Name: Department:

Address: Email Address:

Phone Number: Manager's Name:

Manager's Phone:

Backup Contact

Name: Department:

Address: Email Address:

Phone Number: Manager's Name:

Manager's Phone:

Technical Contact

Name: Department:

Address: Email Address:

Phone Number:

Manager's Name: Manager's Phone:

Technical Support Hours:



State of New York
Department of Civil Service
Albany, New York 12239

ADMINISTRATIVE SERVICES DIVISION
Third Party Connection and Data Exchange Agreement
Attachment 2 – Request Requirements

ADM-125 (4/06)

Escalation List:

Domain name(s):

Host name(s):



User Names and Contact Information. *(List all employees of the Third Party who will use this access.)*

User 1 *(name, phone, email):*

User 2 *(name, phone, email):*

User 3 *(name, phone, email):*

User 4 *(name, phone, email):*

User 5 *(name, phone, email):*

User 6 *(name, phone, email):*

User 7 *(name, phone, email):*

User 8 *(name, phone, email):*

User 9 *(name, phone, email):*

User 10 *(name, phone, email):*

K. Other information



THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT

ATTACHMENT 3 – THIRD PARTY ACCEPTABLE USE POLICY AND AGREEMENT

This Policy and Agreement applies to all forms of computer and networking use, including local access at the Department of Civil Service (DCS) premises, remote access via public or private networks, access using DCS equipment, access using individual or group accounts, and access via other methods.

A signed paper copy of this form must be submitted by any individual (1) for whom authorization of a new user account is requested, (2) who will use a shared third party account, and/or (3) who is requesting reauthorization of an existing use. Modifications to the terms and conditions of this agreement will not be accepted by DCS management.

Indicate here if this is a notification that the User named below no longer requires access:

User's Name (<i>print</i>):			
Organization:			
Telephone Number:	Area code	Number	Extension
Office Address:			

<i>The undersigned acknowledges that he or she has read, understands, and agrees to comply with this Third Party Acceptable Use Policy and Agreement governing the use of DCS computing resources.</i>	
User Signature:	Date:

You must sign this signature page and send it to DCS. Retain a copy of the signature page and the attached Policy for your records. This form must be delivered either by fax or mail to:

**MAIL: NYS Department of Civil Service, Albany, NY 12239
Attention: ITS Enterprise Service Desk**



THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT

ATTACHMENT 3 – THIRD PARTY ACCEPTABLE USE POLICY AND AGREEMENT

I. *Protection of DCS Information*

All records and information maintained in DCS systems accessed by the User are confidential and shall be used by the User solely for the purpose of carrying out the User's official duties. Users may not use any such records and information for any other purpose. No such records or information may otherwise be used or released to any person by the User or by the User's employer or agent, except as may be required by applicable State or federal law or by a court of competent jurisdiction. All accounts and connections will be regularly reviewed.

II. *DCS Log-on Banner*

All users will follow the guidelines of the DCS Log-on Banner as stated below.

NOTICE * The contents of this banner have been recommended to all State agencies by the Office for Technology in the NYS Preferred Standards and Procedures for Information Security. * This electronic system, which includes hardware, software and network components and all data contained therein (the "system"), is the property of the New York State Department of Civil Service (DCS). * Unauthorized use or attempted unauthorized use of this system is not permitted and may constitute a federal or state crime. Such use may subject you to appropriate disciplinary and/or criminal action. Use of this system is only permitted to the extent authorized by DCS. * Use is limited to conducting official business of DCS. Under the Electronic Communications Privacy Act of 1986 (18 U.S.C. 2510, et seq.), notice is hereby given that there are NO facilities provided by this system for sending or receiving private confidential electronic communication. Any use, whether authorized or not, may be monitored, intercepted, recorded, read, copied, accessed or captured in any manner, and used or disclosed in any manner, by authorized DCS personnel without additional prior notice to users. In this regard, users have no legitimate expectation of privacy during any use of this system or in any data on this system. * Use, whether authorized or unauthorized, constitutes expressed consent for DCS to monitor, intercept, record, read, copy, access or capture and use or disclose such information. * DCS policy regarding this matter can be reviewed on the DCS internal website. Copies can also be obtained from the Office of Human Resources Management. Such policies are subject to revision. This notice is consistent with the Acceptable Use Policy issued to DCS employees regarding acceptable use, June 15, 2005. I have read and understand this notification and department policy.

III. *Passwords*

The User is not permitted to share his/her password with anyone. Passwords must never be written down. The User must not use the same password for multiple applications. The User must use passwords that are not easily guessed and must not use their email address as their password.



IV. *Shared Accounts*

All use of shared accounts must be authorized by DCS. Users of shared accounts must be identified to DCS via the completion and signing of this policy/agreement. Third Parties are responsible for notification to DCS when the user base changes. Passwords for shared accounts must not be provided to individuals who have not been identified by Third Party to DCS and who have not completed and signed this policy/agreement.

V. *Virus Protection*

Anti-virus software must be installed and enabled at all times on DCS-owned computers and on third party computers used to conduct DCS business. Virus definition files must be kept up to date. DCS Information Resource Management (IRM) provides anti-virus software and maintains the configuration of that software for all DCS-owned computers.

VI. *Acceptable Use*

DCS computers, computing systems and their associated communication systems are provided to support the official business of DCS. All uses inconsistent with DCS' business activities and administrative objectives are considered to be inappropriate use.

Examples of unacceptable behavior include, but are not limited to the following.

- Any illegal activities that could result in legal actions against and/or financial damage to DCS.
- Computer usage that reasonably harasses or offends other employees, users, or outsiders, or results in public embarrassment to DCS.
- Computer usage that is not specifically approved and which consumes significant amounts of computer resources not commensurate with its benefit to DCS' mission or which interferes with the performance of a worker's assigned job responsibilities.
- Use in connection with compensated outside work or unauthorized not-for-profit business activities.
- Use of sniffers, spyware, ad-ware or other related technology.

VII. *Software Protection*

The User is responsible for complying with copyright, licensing, trademark protection, and fair use restrictions.

VIII. *Reporting Incidents*

Users are required to report incidents of system errors, data discrepancies, application performance problems, to the ITS Enterprise Service Desk at 518-474-2433.



IX. *DCS Rights*

Pursuant to the Electronic Communications Privacy Act of 1986 (18 USC 2510 et seq.), notice is hereby given that there are no facilities provided by this system for sending or receiving private or confidential electronic communications. DCS has access to all access attempts, messages created and received, and information created or stored using DCS resources, and will monitor use as necessary to assure efficient performance and appropriate use. Information relating to or in support of illegal activities will be reported to the appropriate authorities.

DCS reserves the right to log and monitor use. DCS reserves the right to remove a user account from the network. DCS assumes no responsibility or liability for files or information deleted.

The DCS will not be responsible for any damages. This includes the loss of data resulting from delays, non-deliveries, or service interruptions caused by negligence, errors or omissions, or caused by the way the user chooses to use DCS computing facilities.

DCS reserves the right to change its policies and rules at any time.

X. *Penalties*

The User shall hold the State and DCS harmless from any loss or damage to the State and/or DCS resulting from the User's inappropriate disclosure of information covered by this User Agreement. Further, the User's non-compliance with this Agreement may result in the revocation of system privileges, termination of employment or contract with DCS, and/or criminal and/or civil penalties.



Name And Address Of Borrower	DCS Business Unit (Loaning Organization)	
	Point Of Contact	
	Work Location	Telephone
Shipping Address (<i>If different from borrower's</i>)	Manager's Name	
	Date To Be Loaned	
	Date To Be Returned	
Equipment To Be Loaned		
Quantity	Description	Value
Purpose Of Loan		
CONDITIONS OF LOAN		
<ol style="list-style-type: none"> The Borrower of the above equipment agrees to return same in like condition as received from DCS, normal wear and tear excepted, on or before the above return date, unless the loan period is formally extended. Upon termination of this Agreement, Borrower shall uninstall all DCS software included in this Agreement from Borrower's computer and/or network equipment. The Borrower shall not make any copies of DCS software included in this Agreement. In case of loss or damage beyond repair, DCS shall be reimbursed by Borrower at the current price of replacement. The equipment shall not be loaned or transferred to a third party without the written consent of DCS. The right is reserved to cancel the loan or recall the equipment upon ____ days' notice. The Borrower shall assume all shipping and/or transportation costs involved. Other conditions: 		



State of New York
 Department of Civil Service
 The State Campus
 Albany, New York 12239

ADMINISTRATIVE SERVICES DIVISION
Third Party Connection and Data Exchange Agreement
Attachment 4 –Equipment Loan Agreement
 ADM-125 (4/06)

Appendix C
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Agreed (Borrower)	Approved (DCS)
Borrowing Organization	Loaning Organization
Signature Of Authorized Official	Signature Of Authorized Official
Title	Title
Date	Date
RECEIPT OF EQUIPMENT	
Borrower <i>(Upon initial receipt)</i>	DCS Lender <i>(Upon termination of Agreement)</i>
Borrowing Organization	Loaning Organization
Signature Of Authorized Official	Signature Of Authorized Official
Title	Title
Date	Date

APPENDIX C-1

ITS-AGS: INFORMATION SECURITY STANDARDS

Table of Contents

1. Secure System Development Life Cycle Standard	3
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1. Secure System Development Life Cycle Standard

ITS has defined a Secure Systems Development Lifecycle (SSDLC) based on the NIST framework. These SSDLC security requirements and tasks must be considered and addressed within every system, project or application and sufficiently documented to demonstrate the extent to which each security activity is applied.

At a minimum, a SSDLC must contain the following security activities:

1. Define Security Roles and Responsibilities
2. Orient Staff to the SDLC Security Tasks
3. Establish a System Criticality Level
4. Classify Information
5. Establish System Identity Assurance Level Requirements
6. Establish System Security Profile Objectives
7. Create a System Profile
8. Decompose the System
9. Assess Vulnerabilities and Threats
10. Assess Risks
11. Select and Document Security Controls
12. Create Test Data
13. Test Security Controls
14. Perform Certification and Accreditation
15. Manage and Control Change
16. Measure Security Compliance
17. Perform System Disposal

Additional information is found in policy *NYS-S13-001 Secure System Development Life Cycle*, see Table 1 in section 2.

2. New York State Information Technology Security Policies

Every system, project or application must comply with the New York State Information Technology Security Policies, published by the NYS Enterprise Information Security Office (EISO) at its.ny.gov/eiso/policies/security, that are applicable to it. These policies are listed in the table below.

Table 1

NYS-P03-002	Information Security Policy
NYS-P10-006	Identity Assurance Policy

NYS-P13-001	Information Security Exception Policy
NYS-P14-001	Acceptable Use of Information Technology (IT) Resources Policy
NYS-S10-001	CPE Requirements for ISOs/Designated Security Representatives Standard
NYS-S13-001	Secure System Development Life Cycle (SSDLC) Standard
NYS-S13-002	Secure Coding Standard
NYS-S13-003	Sanitization/Secure Disposal Standard
NYS-S13-004	Identity Assurance Standard
NYS-S13-005	Cyber Incident Response Standard
NYS-S14-001	Information Security Risk Management Standard
NYS-S14-002	Information Classification Standard
NYS-S14-003	Information Security Controls Standard
NYS-S14-005	Security Logging Standard
NYS-S14-006	Authentication Tokens Standard
NYS-S14-007	Encryption Standard
NYS-S14-008	Secure Configuration Standard
NYS-S14-009	Mobile Device Security Standard
NYS-S14-010	Remote Access Standard
NYS-S14-013	Account Management / Access Control Standard
NYS-S15-001	Patch Management Standard
NYS-S15-002	Vulnerability Scanning Standard
NYS-S15-003	Wireless Technology Standard
NYS-G10-001	Secure Use of Social Media Guideline

3. Information Security and Emergency Procedures

New York State considers the security and protection of State information to be a critical aspect of this engagement.

Contractor agrees to comply with the following requirements:

- Comply with all federal and state security policies in relation to providing services to ensure the confidentiality, integrity and availability (CIA) of NYS data.
- NYS follows NIST 800-53 guidelines for implementing system security and privacy controls. Vendors should also be aware of the FedRAMP program when implementing systems for NYS.
- Run NYS Enterprise Information Security Office (EISO) approved security scans specified in policy *NYS-S15-002 Vulnerability Scanning Standard* prior to the launch of any major changes to the [enter project name], as well as follow policy *NYS-S13-001 Secure System Development Life Cycle*.
- Undergo a data classification in conjunction with [enter agency name] to identify the criticality of the data being collected and stored.
- Share all vendor's third party audit reports with the State.
- Allow the State to verify implementation of recommendations resulting from the third party audits.
- In the event of a security breach, as defined by State Technology law Section 208, the Contractor shall act in accordance with New York State Breach Notification Law.
- Contractor is required to submit, as part of its overall security plan, a Protection and Risk Assessment Plan for the management of the State's confidential information. The Protection and Risk Assessment Plan is expected to include Contractor's technology- and non-technology-based process for securing the State's confidential information. At a minimum, the Protection and Risk Assessment Plan must address the areas listed below.
 - Ensuring and certifying that employees, subcontractors, and business partners are aware of and comply with NYS information security and confidentiality requirements.
 - Documentation to detail the extent to which each security activity listed in section 1. *Secure System Development Life Cycle Standard* is followed.
 - Security reviews and audits, including third-party reviews, audits, and facility audits.
 - Use of security tools and standards (e.g., security software, encryption standards, etc.).

- Maintaining and enhancing the bidder's information security environment and business practices with procedures and policies for a security environment aligning with industry best practices.

Contractor is expected to provide copies of Continuity of Operations Plan (COOP) and Disaster Recovery Plan (DRP) plans for all data, records, forms, and data processing operations associated with [enter project name]. **The following areas should be addressed as part of the security documentation:**

- Establish procedures to ensure its data processing system will be back in at least minimal operation within [insert time constraint].
- Ensure complete, accurate and up-to-date documentation of all systems and procedures used to operate [enter project name]. This documentation shall include a back-up copy stored encrypted, where appropriate, off premises (New York State data should not reside outside of the continental United States).
- Redundant architectures, based on the criticality of data, e.g. Tier III data center; regular file back-ups; and continuous 24-hour monitoring required for hosted environments.
- Provide recovery procedure training for all personnel and refresher training at least annually.

4. Cloud Security Requirements

If cloud based services are a component of the solution or services to be provided by Contractor, Contractor must comply with FedRAMP (<https://www.fedramp.gov>) standards for cloud services, and other applicable federal and New York State laws, regulations and requirements.

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

PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES

I. General Provisions

- A. The Department of Civil Service (the “Department”) is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”) for all State contracts, as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the Department, to fully comply and cooperate with the Department in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State-certified minority and women-owned business enterprises (“MWBEs”). The Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) and other applicable federal, state, and local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the assessment of liquidated damages pursuant to Section VII of this Appendix and such other remedies are available to the Department pursuant to the Contract and applicable law.

II. Contract Goals

- A. For purposes of this Contract, the Department hereby establishes an overall goal of 16 percent for MWBE participation, based on the current availability of MBEs and WBEs.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section II-A hereof, the Contractor should reference the directory of MWBEs at the following internet address: <https://ny.newnycontracts.com>.

Additionally, the Contractor is encouraged to contact the Division of Minority and Women’s Business Development at (212) 803-2414 to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be

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applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25percent of the total value of the contract.

- D. The Contractor must document “good faith efforts,” pursuant to 5 NYCRR § 142.8, to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. Such documentation shall include, but not necessarily be limited to:
1. Evidence of outreach to MWBEs;
 2. Any responses by MWBEs to the Contractor’s outreach;
 3. Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
 4. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the Department with MWBEs; and,
 5. Information describing specific steps undertaken by the Contractor to reasonably structure the Contract scope of work to maximize opportunities for MWBE participation.

III. Equal Employment Opportunity (“EEO”)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.
- B. In performing the Contract, the Contractor shall:
1. Ensure that each contractor and subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 2. The Contractor shall submit an EEO policy statement to the Department within seventy-two (72) hours after the date of the notice by the Department to award the Contract to the Contractor.
 3. If the Contractor, or any of its subcontractors, does not have an existing EEO policy statement, the Department may require the Contractor or subcontractor to adopt a model statement (see Appendix D-1 Equal Employment Opportunity Policy Statement).
 4. The Contractor’s EEO policy statement shall include the following language:

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- a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
- b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
- d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph “E” of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

C. Form EEO-100 - Staffing Plan

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The Contractor shall complete the staffing plan form and submit it as part of their bid or proposal or within a reasonable time, as directed by the Department.

D. Form EEO-101 - Workforce Utilization Report

1. The Contractor shall submit a Workforce Utilization Report, and shall require each of its subcontractors to submit a Workforce Utilization Report, in such form as shall be required by the Department on a Quarterly basis during the term of the Contract.
2. Separate forms shall be completed by the Contractor and any subcontractors.
3. Pursuant to Executive Order #162, contractors and subcontractors are also required to report the gross wages paid to each of their employees for the work performed by such employees on the contract on a quarterly basis.

E. The Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The

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Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. MWBE Utilization Plan

- A. The Contractor represents and warrants that the Contractor has submitted an MWBE Utilization Plan, or shall submit an MWBE Utilization Plan at such time as shall be required by the Department, through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that the Contractor may arrange to provide such evidence via a non-electronic method to the Department, either prior to, or at the time of, the execution of the contract.
- B. The Contractor agrees to adhere to such MWBE Utilization Plan in the performance of the Contract.
- C. The Contractor further agrees that failure to submit and/or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the Department shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is non-responsive.

V. Waivers

- A. If the Contractor, after making good faith efforts, is unable to achieve the MWBE Contract Goals stated herein, the Contractor may submit a request for a waiver through the NYSCS, or a non-electronic method provided by the Department. Such waiver request must be supported by evidence of the Contractor’s good faith efforts to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, the Department shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.
- B. If the Department, upon review of the MWBE Utilization Plan, quarterly MWBE Contractor Compliance Reports described in Section VI, or any other relevant information, determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals, and no waiver has been issued in regards to such non-compliance, the Department may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

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VI. Quarterly MWBE Contractor Compliance Report

The Contractor is required to submit a quarterly MWBE Contractor Compliance Report through the NYSCS, provided, however, that the Contractor may arrange to provide such report via a non-electronic method to the Department by the 10th day following the end of each quarter during the term of the Contract.

VII. Liquidated Damages - MWBE Participation

- A. Where the Department determines that the Contractor is not in compliance with the requirements of this Appendix and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to the Department liquidated damages.

- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the Department, the Contractor shall pay such liquidated damages to the Department within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

M/WBE AND EEO POLICY STATEMENT

I, _____, the (awardee/contractor) _____ agree to adopt the following policies with respect to the project being developed or services rendered at _____

M/WBE

EEO

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
(2) Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.
(3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
(4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
(5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. The Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
(6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that, if legally permissible, bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

- (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.
(b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.
(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
(d) The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract

Agreed to this _____ day of _____, 2_____

By _____

Print: _____ Title: _____

_____ is designated as the Minority Business Enterprise Liaison
(Name of Designated Liaison)

responsible for administering the Minority and Women-Owned Business Enterprises- Equal Employment Opportunity (M/WBE-EEO) program.

M/WBE Contract Goals

_____percent Minority and Women's Business Enterprise Participation

_____percent Minority Business Enterprise Participation

_____percent Women's Business Enterprise Participation

(Authorized Representative)

Title: _____

Date: _____



Your MWBE Utilization and Reporting Responsibilities Under Article 15-A

The New York State Contract System (“NYSCS”) is your one stop tool compliance with New York State’s MWBE Program. It is also the platform New York State uses to monitor state contracts and MWBE participation.


GETTING STARTED

To access the system, you will need to login or create a user name and password at <https://ny.newnycontracts.com>. If you are uncertain whether you already have an account set up or still need to register, please send an email to the customer service contact listed on the Contact Us & Support page, or reach out to your contract’s project manager. For verification, in the email, include your business name and contact information.

VENDOR RESPONSIBILITIES

As a vendor conducting business with New York State, you have a responsibility to utilize minority- and/or women-owned businesses in the execution of your contracts, per the MWBE percentage goals stated in your solicitation, incentive proposal or contract documents. NYSCS is the tool that New York State uses to monitor MWBE participation in state contracting. Through the NYSCS you will submit utilization plans, request subcontractors, record payments to subcontractors, and communicate with your project manager throughout the life of your awarded contracts.

There are several reference materials available to assist you in this process, but to access them, you need to first be registered within the NYSCS. Once you log onto the website, click on the **Help & Support** >> link on the lower left hand corner of the Menu Bar to find recorded trainings and manuals on

all features of the NYSCS. You may also click on the  icon at the top right of your screen to find videos tailored to primes and subcontractors. There are also opportunities available to join live trainings, read up on the “Knowledge Base” through the Forum link, and submit feedback to help improve future enhancements to the system. Technical assistance is always available through the **Contact Us & Support** link on the NYSCS website (<https://ny.newnycontracts.com>).

For more information, contact your project manager.