

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

and

Anthem HealthChoice Assurance, Inc. dba Anthem Blue Cross

AGREEMENT NO. C000755

This Agreement (“Agreement” or “Contract”) is entered into by and between New York State Department of Civil Service (“Department” or “DCS”), having its principal office at the Empire State Plaza, Albany, NY, 12239 and Anthem HealthChoice Assurance, Inc. dba Anthem Blue Cross (“Contractor”), a corporation authorized to do business in the State of New York with a principal place of business located at 14 Wall Street, New York, NY 10005. The foregoing are collectively referred to as “the Parties”.

WITNESSETH

WHEREAS, Civil Service Law Article XI authorizes and directs the President of the Civil Service Commission (“President”) and the Department to establish a dental plan for the benefit of State Employees and their Eligible Dependents, and for the benefit of Participating Employers’ Employees and their Eligible Dependents; and

WHEREAS, New York State, through DCS, administers the New York State Dental Plan (“Dental Plan”) to provide dental plan benefits to certain New York State (NYS) Employees represented by various participating unions, and their Eligible Dependents, and Employees and their Eligible Dependents enrolled in the Student Employee Health Plan (“SEHP”); and

WHEREAS, the Department issued a Request for Proposal (“RFP”) entitled “Dental Plan Services” on May 16, 2023, which was amended on August 1, 2023, to secure the services of a qualified organization to administer the Dental Plan; and

WHEREAS, the Contractor submitted a proposal in response to the RFP; and

WHEREAS, after thorough review and evaluation by NYS 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 administrative services for the Dental Plan, pursuant to the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and provisions contained herein, the Parties agree as follows:

SECTION I: TERM

The Contract will take effect and commence upon approval of the Contract by the New York State Office of the State Comptroller (OSC) (Effective Date). The term of the Contract shall include an Implementation Period of a minimum of 180 calendar days followed by an additional approximate 4.5 years which shall begin on the Full Dental Plan Services Start Date (Services Start Date) and end on December 31, 2028 (End Date). [Note: The "Full Dental Plan Services Start Date" is September 1, 2024, or 180 calendar days after the Effective Date, whichever is later.]

In accordance with New York State policy and New York State Finance Law section 112(2), the resulting contract is deemed executory until it has been approved by the New York State Attorney General's Office (AG) and approved and filed by the OSC.

SECTION II: INTEGRATION, MERGER AND ORDER OF PRECEDENCE

- 2.1 The Agreement shall be composed solely of the following documents which, in the event of an inconsistency or conflicting terms, shall be given precedence in the order indicated:
- 2.1.1 Appendix A (Standard Clauses for All New York State Contracts), dated June 2023, attached hereto, is hereby expressly made a part of this Contract as fully as if set forth at length herein;
 - 2.1.2 Any Amendments to the body of the Agreement;
 - 2.1.3 The body of the Agreement (that portion preceding signatures);
 - 2.1.4 Appendix B (Standard Clauses for all Department Contracts), dated April 2022, attached hereto, is hereby expressly made a part of this Contract as if fully set forth herein;
 - 2.1.5 Appendix C (New York State Department of Civil Service Information Security Requirements), dated March 2023, attached hereto, is hereby expressly made a part of this Contract as if fully set forth herein;
 - 2.1.6 The following Attachments attached and incorporated by reference to the body of the Agreement:
 - a. Attachment 1: Department's Official Responses to Contractors Questions raised concerning the RFP, issued on August 1, 2023;
 - b. Attachment 2: the Amended Request for Proposal, released on May 16, 2023, entitled, "Dental Plan Services", as amended on August 1, 2023, except for Appendix A (Standard Clauses for all New York State Contracts), which incorporates any appendices, attachments, exhibits, amendments, and updates to said RFP;
 - c. Attachment 3: "Contract Fees", which consists of the Contractor's Administrative Fees for Project Services and the Non-Network Reimbursement Schedule; and

d. Attachment 4, which consists of:

- i. Contractor's Technical Proposal dated September 26, 2023;
- ii. Contractor's Response to Questions from the Technical Management Interview, dated December 15, 2023;

- 2.2 Only documents expressly enumerated above shall be deemed a part of the Agreement, and references contained in those documents to additional Contractor documents not enumerated above shall be of no force and effect.
- 2.3 All prior agreements, representations, statements, negotiations, and undertakings are superseded. All statements made by the Department shall be deemed to be representations and not warranties.
- 2.4 The Department rejects all bid deviations or extraneous terms submitted by the Contractor not expressly accepted herein.
- 2.5 Nothing contained in this Agreement, expressed, or implied, is intended to confer upon any person, corporation, or other entity, other than the Parties hereto and their successors in interest and assigns any rights or remedies under or by reason of the Agreement.
- 2.6 The terms, provisions, representations, and warranties contained in the Agreement shall survive performance hereunder.

SECTION III: MODIFICATIONS AND CLARIFICATIONS

- 3.1 The Contractor understands that the "Non-Participating Provider Reimbursement Schedule" (included in Contract Attachment 3) [REDACTED]
[REDACTED] The Department will act as intermediary between the Contractor and the incumbent during implementation to provide the complete Non-Participating Provider Reimbursement Schedule.
- 3.2 With regard to Contract Section 5.10 Plan Audit and Fraud Protection, the following clarification is agreed to between the Parties: Contractor's reporting obligations will commence upon the date Contractor's Fraud, Waste, and Abuse department receives notice to assess and evaluate third-party allegations and/or errors applicable to the Department's dental plan.
- 3.3 With regard to Contract Section VIII: INSURANCE REQUIREMENTS, the following clarifications are agreed to between the Parties:
 - (a) RFP Section, 4.6 Insurance Requirements; 1, General Conditions; b(iv) – In addition to the requirements of this Section and for purposes of clarification the Contractor's Certificate of Insurance will have the Department as an additional insured, as its interest may appear, under its General Liability policy only.

- (b) RFP Section, 4.6 Insurance Requirements; 1, General Conditions; f - In addition to the requirements of this Section and for purposes of clarification the Contractor confirms that Anthem's self-insured retention/deductibles are over \$100,000 and the Contractor acknowledges it is solely responsible for all claim expenses and loss payments within deductibles or self-insured retentions (SIRs).
- (c) RFP Section, 4.6 Insurance Requirements; 1, General Conditions; i - In addition to the requirements of this Section and for purposes of clarification the Parties agree that the Contractor will add the Department as an Additional Insured to the General Liability policy.
- (d) RFP Section, 4.6 Insurance Requirements; 2. Specific Coverage and Limits; c – In compliance with the requirements of this Section and for purposes of clarification, Contractor confirms they maintain and will maintain during the term of the Contract a Managed Care Errors and Omissions (E&O) policy with \$15 million limits, subject to self-insured retentions of \$10 million each claim and \$50 million each class action. In addition, Contractor confirms they maintain and will maintain during the term of the Contract a second layer of coverage, in excess of this primary layer that provides an additional \$5 million coverage.

SECTION IV: LEGAL AUTHORITY TO PERFORM

- 4.1 The Contractor represents that it possesses the legal authority to perform Project Services in accordance with the terms and conditions of the Agreement.
- 4.2 The Contractor shall maintain appropriate corporate and/or legal authority, which shall include, but is not limited to, the maintenance of an administrative organization capable of delivering Project Services in accordance with the Agreement and the authority to do business in the State of New York or any other governmental jurisdiction in which the Project Services are to be delivered.
- 4.3 The Contractor shall provide the Department with prompt notice in writing of the initiation of any legal action or suit which relates in any way to the Agreement, or which may affect performance of the Contractor's duties under the Agreement.

SECTION V: PROJECT SERVICES

The Contractor will provide comprehensive administration of the Dental Plan which includes the following services (Project Services) being procured under this Contract:

5.1 Account Team

The Contractor must provide a knowledgeable, experienced account leader and team dedicated solely to the Dental Plan who have the responsibility and authority to command the appropriate resources necessary to implement and deliver Project Services (hereinafter "Account Team").

- 5.1.1 The Contractor's assigned Account Team must be comprised of qualified and experienced individuals who are acceptable to the Department and who will ensure that the operational, clinical, and financial resources are in place to operate the Dental Plan in an efficient manner.
- 5.1.2 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 to meet all Dental Plan requirements and to address any issues that may arise during the performance of the Contract.
- 5.1.3 The Contractor must ensure that the proposed Account Team is experienced, accessible, and sufficiently staffed to provide responses within one Business Day to administrative concerns and inquiries posed by the Department, members of the Council on Employee Health Insurance, or union representatives regarding member-specific claims issues for the duration of the Contract to the satisfaction of the Department.
- 5.1.4 The Contractor's assigned Account Team must immediately notify the Department of actual or anticipated events impacting Dental Plan costs and/or delivery of services to Enrollees such as, but not limited to, legislation, litigation, and operational issues.
- 5.1.5 The Contractor's assigned Account Team must ensure that the Dental Plan is in compliance with all legislative and statutory requirements. In instances in which the Contractor is unable to comply with any legislative or statutory requirements, the Department must be notified in writing immediately and the Contractor must work with the Department to take the appropriate remedial action to come into compliance as soon as practicable.

5.2 Implementation Plan

The Contractor must deliver an overall Implementation Plan. The Implementation Period shall be a minimum 180 calendar days prior to the Dental Services Start Date. The Contractor must designate an Implementation Team composed of individuals who have completed an implementation for at least one large client. At least two account team members on the team should have experience with an implementation for one large client. A large client is considered any employer with at least 50,000 covered lives. All implementation activities must be completed by the Service Start Date so that Project Services can commence on the Service Start Date.

- 5.2.1 The Contractor must provide, subject to Department final approval, an Implementation Plan that results in the implementation of all Project Services by the required timeframes, indicating estimated timeframes for individual task completion, testing dates and objectives. The Implementation Plan must include key activities such as training of call center staff, website development, network development, transition of benefits, eligibility feeds and testing claims processing. The Implementation Plan should provide deadlines for these activities and identify who will be responsible for completion of these activities from the Contractor's team. The Implementation Plan must also identify and describe areas where complications may be expected and what steps Contractors will take to ensure timely completion.

5.2.2 The Contractor must provide an Implementation Plan, no later than 10 business days after the Contract Effective Date, which will allow the Department to review the Contractor's readiness in the areas outlined in RFP Section 3.2.1.

5.2.3 By the Services Start Date, the Contractor must have the following in place:

- a. A contracted Participating Provider Network that meets the access standard set forth in Contract Section 5.3.1; and
- b. The ability to accurately process all Dental Plan claims, as submitted.

5.2.4 Forty-five (45) calendar days prior to the Services Start Date, the Contractor must have the following in place:

- a. A fully operational, dedicated Call Center available for the use of Members and health benefits administrators as detailed in Section 5.4.1.b of this Contract. Members, for purposes of this Contract, are defined as all policy holders and their dependents; and
- b. A fully functioning, customized Dental Plan website available, as described in Section 5.5 of this Contract.

5.3 Participating Provider Network

The Contractor must have a comprehensive Participating Provider Network in place to allow adequate access for Dental Plan Enrollees to network providers. The network access standards apply to all Dental Plan Enrollees, regardless of what state they reside in. The Contractor must provide our Enrollees their top tier network.

5.3.1 The Contractor must maintain a credentialed and contracted Participating Provider Network that, throughout the term of the Contract, that meets or exceeds the Minimum Access Standards as follows:

Provider Type	Urban	Suburban	Rural
General Dentist	[REDACTED]	[REDACTED]	[REDACTED]
Pedodontist	[REDACTED]	[REDACTED]	[REDACTED]

Provider Type	Urban	Suburban	Rural
Orthodontist	[REDACTED]	[REDACTED]	[REDACTED]
Periodontist	[REDACTED]	[REDACTED]	[REDACTED]
Oral Surgeon	[REDACTED]	[REDACTED]	[REDACTED]
Endodontist	[REDACTED]	[REDACTED]	[REDACTED]

5.3.2 In developing its proposed Dental Plan Provider Network, the Contractor is expected to use its best efforts to substantially maintain the composition of Network Providers included in the Dental Plan's current Provider Network. Current providers include General Dentist, Pedodontist, Orthodontist, Periodontist, Oral Surgeon, and Endodontist. The Contractor may propose additional types of providers. The Contractor shall monitor the network monthly to ascertain if their Provider practices are open or closed to new patients. If the practice is open to new patients, the wait time to see a provider must be actively monitored. Provider availability must be taken into account in relation to Member accessibility.

5.3.3 The Contractor must develop communication materials which accurately describe the Dental Plan benefit to eligible populations.

5.3.4 The Contractor shall offer participation in its Provider Network to any Provider who meets the Contractor's credentialing criteria if the Provider is a high-volume provider or upon the Department's request where such inclusion is deemed necessary by the Department to meet the needs of the Members even if not otherwise necessary to meet the minimum access guarantees.

5.3.5 The Contractor must ensure that all Providers are credentialed and meet the licensing and quality standards required by the state in which they operate before they provide any Project Services.

5.3.6 The Contractor must have an effective process by which to confirm Providers continuing compliance with licensing and credentialing standards.

5.3.7 The Contractor must provide a quarterly network update outlining Provider recruitment and retention efforts by County.

5.4 Customer Service

The Plan requires that the Contractor provide quality customer service to Members as described herein. The Contractor must maintain a nationwide toll-free telephone number to service Members and Providers. Through this toll-free telephone number, Members and Providers must have access to representatives who respond to questions and inquiries regarding Dental Plan benefits, eligibility and claims status, and any complaints regarding the Project Services. The Contractor agrees to customer service performance guarantees in Section 6 of this Contract.

5.4.1 The Contractor will be responsible for all customer support and services including, but not limited to:

- a. Providing Members access to information for all Dental benefits and services, through the nationwide toll-free telephone number, from 8:00 a.m. through 5:00 p.m. ET, Monday through Friday, except on legal holidays observed by the State.
- b. Maintaining a fully operational dedicated Call Center providing all aspects of customer support and clinical services as set forth in the RFP. The dedicated Call Center must be open and operational a minimum of forty-five (45) calendar days prior to the Services Start Date to assist Members with questions concerning transition from the current Dental Plan. The Call Center line shall have the additional capability to transfer calls internally to the appropriate areas of the Dental Plan. The Call Center shall be staffed by trained customer service representatives (CSRs) available during the required customer service hours of operation.
 - i. The Contractor must maintain a dedicated Call Center staffed by fully trained CSRs and supervisors.
 - ii. CSRs must be trained and capable of responding to a wide range of questions, complaints, and inquiries, including but not limited to: Dental Plan benefits; status of pre-determination requests; eligibility and claim status.
 - iii. The Contractor must provide access to a teletypewriter (TTY) number for callers utilizing a TTY device because of a hearing or speech disability. The TTY number must provide the same level of access to the Call Center as the non-TTY number.
 - iv. In accordance with federal and State law, the Contractor must provide access to a translation line or interpretation service to Members who do

not read, speak, write, or understand English as their primary language in order to remove potential barriers to accessing services.

- v. CSRs must use an integrated system to log and track all Member calls. The system must track the total number of calls entering the Nationwide toll-free telephone number and the date, time, duration, and reason for all calls. The system must create a record of the Member contacting the call center, the call type, and all customer service actions and resolutions.
- vi. The Contractor must maintain designated backup customer service staff with Dental Plan specific training to handle any overflow when the dedicated customer service center is unable to meet the Contractor's proposed customer service performance guarantees. This backup system would also be utilized in the event the primary customer service center becomes unavailable.
- vii. The Contractor must establish a process through which Providers can verify eligibility of Members during Call Center hours.

5.5 Member Communication Support

The Department regularly provides information regarding Dental Plan benefits to Members through publications, the Department's website, media, and attendance at various meetings. The Contractor is required to assist the Department with the creation, review and presentation of Dental Plan Services materials that will enhance a Member's understanding of the Dental Plan benefits.

- 5.5.1 All Member communications developed by the Contractor are subject to the Department's review and prior written approval, including but not limited to any regular standardized direct communication with Members or their Dentists in connection with Member utilization or the processing of Member claims, either through mail, e-mail, fax, or telephone. The Department in its sole discretion reserves the right to require any change it deems necessary.
- 5.5.2 The Contractor is responsible for providing Member communication services to the Department including, but not limited to:
 - a. Designing and producing all necessary claim forms, benefit booklets, and other printed materials in sufficient quantities to promote and operate the Dental Plan;
 - b. Designing and producing a Dental Plan Certificate of Insurance and Attachment. The Dental Plan Certificate of Insurance and Attachment means the booklet that describes the Dental Plan benefits applicable to each Member's employee group or union and summarizes Dental Plan provisions, including eligibility criteria. This document must be approved through the NYS Department of Financial Services ("DFS").
 - c. Developing language describing the Dental Plan for inclusion in the NYSHIP

General Information Book and any other form of communication, subject to the Department's review and approval;

- d. Retaining no proprietary or literary rights with respect to communication material developed or distributed solely for the Dental Plan and executing any assignment found necessary to release proprietary or literary rights to such communication material;
 - e. Timely, as determined by the Department, reviewing, and commenting on proposed communication material developed by the Department;
 - f. Assisting with Summaries of Benefits Coverage (SBC) for the SEHP, whose medical and dental coverage is consolidated with coverage information from other Program administrators for the Empire Plan;
 - g. Distributing Dental Plan materials to Members; including but not limited to annual mailings of summary plan documents. A Contractor shall have the ability to send member communication materials through both U.S. mail and email;
 - h. Providing the Department's Fulfillment Center with Dental Plan publications and ensure sufficient quantity on hand to meet the immediate needs of HBAs to supply each newly eligible employee throughout the term of the Contract and provide replacement copies when requested. Fulfillment Center means the Department's distribution center for publications supplied to Enrollees of New York State Agencies and PEs; and
 - i. Accounting and paying for all development, production and mailing costs incurred to disseminate Dental Plan communications materials to Enrollees and Department Fulfillment Center (excluding cost to ship publications from Department Fulfillment Center to HBAs and Enrollees).
- 5.5.3 The Contractor must develop appropriate customized forms and letters for the Dental Plan, including but not limited to Member claim forms, Explanation of Benefits, certification letters and appeal letters. The Department reserves the right to review and approve all communications and forms prior to distribution.
- 5.5.4 The Contractor is responsible for distributing Dental Plan Certificates of Insurance and Attachments to Health Benefit Administrators (HBAs) in quantities equal to three percent of their agency's Enrollee count by bargaining unit for 2022 which can be found in *Covered Lives by Bargaining Unit or Other Group* (RFP Attachment 26). HBA means an agency representative, primarily located in agency human resource office, who provides information on health and dental benefits to agency staff.
- 5.5.5 Upon the Department's request, on an "as needed" basis, the Contractor will provide Contractor staff to participate in health fairs, select conferences, benefit design information sessions and Union events in New York State and elsewhere in the United States. All costs associated with these services, including all fees associated with travel, meals and lodging to attend the events, are included in the Contractor's Administrative Fee.

- 5.5.6 The Contractor is responsible to design and produce a Participating Provider directory and making the directory accessible on the Contractor's dedicated Dental Plan website. The directory shall be updated daily to ensure Members have access to the most up-to-date information. The Contractor must ensure the directory contains the most up-to-date information regarding network Providers.
- 5.5.7 The Contractor is required to provide Member Plan Benefit information through a link on the Department's website. Content accessible through this link shall be strictly limited to information that pertains to the Dental Plan. No other links or content are permitted on the Contractor's Plan Benefits website without the written approval of the Department. The Department shall be notified of all regularly scheduled maintenance or material modifications to the site no later than one Business Day prior to such maintenance being performed. Information provided through this link shall include, but not be limited to:
- a. Plan Benefits;
 - b. Eligibility;
 - c. Cost-sharing information;
 - d. Year-to-date deductibles, annual maximums, as well as lifetime maximums;
 - e. Claim status and submission information;
 - f. Explanation of Benefits Statements; and
 - g. Access to Dental Plan Provider Directory.
- 5.5.8 The fully functioning website, approved and accepted by the Department, must be available a minimum of forty-five (45) calendar days prior to the Services Start Date including a secure dedicated link from the Department's website providing Members online access to the Contractor's website meeting all the requirements as set forth in this Contract. The Contractor's website must conform to the New York State website style provided by the Department of Civil Service and meet all NYS Web Accessibility requirements (See Appendix B for NYS Web Accessibility requirements).
- 5.5.9 The Contractor's website must include a web-based user interface compatible with:
- a. Google Chrome current version for Windows';
 - b. Mozilla Firefox current version;
 - c. Safari current version; and

- d. Microsoft Edge current version

5.5.10 The Contractor's websites must be mobile friendly, fully functional, and display correctly on devices including, but not limited to:

- a. Smartphones;
- b. iPhones;
- c. iPads;
- d. Tablets; and
- e. Laptops

5.6 Reporting Services

- 5.6.1 The Contractor must provide the Department with regular, periodic reports that are designed to document that Member, network, and account management service levels are being maintained and that all claims are being paid in accordance with the Contract requirements. The Contractor may on occasion be requested by the Department to provide ad-hoc reporting and analysis within twenty-four hours of a request.
- 5.6.2 In order to fulfill its obligations to Members and ensure Contract compliance, the Contractor must provide accurate claims Data information on a claim processing cycle basis as well as summary reports concerning the Dental Plan and its administration.
- 5.6.3 All electronic files must be in a format acceptable to the Department. The Department will initially review and approve the proposed file format during the Implementation Period, but this file format may be adjusted during the term of the Contract at the discretion of the Department. Upon receipt by the Department, all electronic files are first validated for compliance with the agreed-upon format. Files that fail to adhere to this structure are rejected in their entirety and must be re-submitted.
- 5.6.4 The Contractor is responsible for reporting services including, but not limited to:
 - a. Developing and delivering accurate and timely management, financial, and utilization reports as specified in *Program Reporting* (RFP Attachment 17). These reports will be delivered to the Department no later than their respective due dates and are required by the Department for its use in the review, management, monitoring, and analysis of the Dental Plan. The exact format (paper and/or electronic Microsoft Access, Excel, Word), frequency, and due dates for such reports will be specified by the Department;
 - b. Ensuring that all financial reports including claim reports are generated from amounts billed to the Dental Plan and reconciled to amounts reported in quarterly and annual financial experience reports;

- c. Reporting of all performance guarantees as specified within the Contract and for any occurrence when a performance guarantee is not met, Contractor will provide a root cause analysis and detail corrective action; and
- d. Providing ad hoc reports and other Data analysis at no additional fee to the Department. The exact format, frequency, and due dates for such reports shall be specified by the Department. Any ad hoc report generated for the Department must be reflective of the Dental Plan's actual claims experience and Member population. Information required in the ad hoc reports may include, but is not limited to:
 - i. Forecasting and trend analysis Data;
 - ii. Utilization Data;
 - iii. Utilization review savings;
 - iv. Benefit design modeling analysis;
 - v. Reports segregating claims experience for specific populations including Department assigned Benefit Programs (RFP Attachment 19 Benefit Programs); and
 - vi. Reports to monitor Contract compliance.
- e. Assisting and supporting the Department with all aspects of the premium rate development including, but not limited to:
 - i. Providing a team of qualified and experienced individuals who are acceptable to the Department and who will assist and support the Department in developing premium rates.
 - ii. Working with the Department and its contracted actuarial consultant through the annual premium renewal process to further document and explain any premium rate recommendation.

5.7 Enrollment Management

The Department currently utilizes a web-based enrollment system for the administration of employee benefits known as the New York Benefits Eligibility and Accounting System (NYBEAS). NYBEAS is the source of eligibility information for all Dental Plan, Members. Enrollment information is outlined in Enrollment by Month (RFP Attachment 24), Total Dental Enrollment by Age (RFP Attachment 25) and Covered Lives by Bargaining Unit or Other Group (RFP Attachment 26).

- 5.7.1 The Contractor must maintain accurate, complete, and up-to-date enrollment files, based on information provided by the Department. In the case of a conflict in the enrollment files, the Department-provided enrollment system information will control.

The Contractor must provide enrollment management services including but not limited to:

- a. Performing an initial enrollment load to commence upon receipt of the enrollment file from the Department during the Implementation Period. The file must be EDI Benefit Enrollment and Maintenance Transaction set 834 (ANSI x.12 834 standard) and be either 834 (4010x095A1) or 834 (005010x220), fixed-length ASCII text file, or a custom file format as determined by the Department;
- b. Testing to determine if the initial enrollment file and daily enrollment transaction loaded correctly, and that the enrollment system interfaces with the claims processing system to accurately adjudicate claims. The Contractor shall submit enrollment test files to the Department for auditing, provide the Department with secure online access required to ensure accurate loading of the Dental Plan Services enrollment Data, and promptly correct any identified issues to the satisfaction of the Department;
- c. Developing and maintaining an enrollment system capable of receiving, reading, interpreting, and storing secure enrollment transactions (Monday through Friday) and having all transactions loaded to the claims processing system within twenty-four hours of the release of a retrievable file by the Department. The Contractor shall, on a daily basis, manually review and load any transactions which did not process correctly from the daily ANSI x.12 834 standard 005010x220 file by reviewing the correct enrollment date maintained in the NYBEAS. The Contractor shall immediately notify the Department of each transaction that did not process correctly and any delay in loading enrollment transactions. In the event the Contractor experiences a delay due to the quality of the Data supplied by the Department, the Contractor shall immediately load all records received (that meet the quality standards for loading) within twenty-four hours of their release, as required. The Department will release enrollment changes to the Contractor in an electronic format daily (Monday through Friday). On occasion, the Department will release more than one enrollment file within a twenty-four-hour period. The Contractor must be capable of loading all enrollment files within the twenty-four-hour performance standard. The format of these transactions will be in an EDI Benefit Enrollment and Maintenance transaction set, utilizing an ANSI x.12 834 standard 005010x220 transaction set in the format specified by the Department. The latest transaction format is contained in NYBEAS Enrollment Record Layout - Transaction Set Header (RFP Attachment 20). The Contractor must also have the capability to receive alternate identification numbers and any special update files from the Department containing eligibility additions and deletions, including emergency updates if required;
- d. Ensuring the security of all enrollment information, as well as the security of a HIPAA compliant computer system, in order to protect the confidentiality of Data contained in the enrollment file. Any transfers of enrollment Data within the Contractor's system or to external parties must be completed via a secured process, compliant with the information security requirements set forth in the Department's Information Security Requirements (Appendix C);

- e. Providing a back-up system or have a process in place where, if enrollment information is unavailable, Members can obtain services without interruption;
- f. Cooperating fully with the Department or third parties on behalf of the Department on any Department or State initiatives to use new technologies, processes, and methods to improve the efficiencies of maintaining enrollment Data including any enrollment file conformance testing requested during the Contract;
- g. Maintaining a read-only connection to the Department provided enrollment system for the purpose of providing the Contractor's staff with access to current Dental Plan Services enrollment information. Contractor's staff must be available to access enrollment information through the Department-provided enrollment system, Monday through Friday, from 8:00 a.m. to 5:00 p.m. ET, except for holidays observed by the State as indicated on the Department's website;
- h. Meeting the administrative requirements for National Medical Support Order (NMSO). For eligibility requirements for NMSO see the General Information Book for Actives at [https:// www.cs.ny.gov/employee-benefits/nyship/shared/publications/ general-information-book/2021/ny-gib-2021.pdf](https://www.cs.ny.gov/employee-benefits/nyship/shared/publications/general-information-book/2021/ny-gib-2021.pdf), for PEs at <https://www.cs.ny.gov/employee-benefits/nyship/shared/publications/general-information-book/2022/pe-gib-2022.pdf>, or for SEHP at <https://www.cs.ny.gov/employee-benefits/nyship/shared/publications/general-information-book/2021/sehp-gib-2021.pdf>. A child covered by NMSO or the child's custodial parent, legal guardian, or the provider of services to the child, or a New York State agency to the extent assigned the child's rights, may file claims and the Contractor must make payment for covered benefits or reimbursement directly to such party. The Contractor is required to store this information in its system(s) so that any claim payments or any other plan communication distributed by the Contractor, including access to information on the Contractor's Plan Benefits website would go to the person designated in the NMSO;
- i. Sharing Data with entities to be determined by New York State including, but not limited to, health benefits administrators for New York State agencies and PEs;
- j. Agreeing to the State defined eligibility periods as they relate to waiting periods and duration of coverage as a member (See General Information Books referenced in Contract Section 5.7.1.h above for additional information on State-defined eligibility periods);
- k. Administering insurance coverage for any employee and their Eligible Dependents whom the Department determines is eligible for coverage (file layout information for dependent reinstatements and terminations can be found in RFP Attachment 32);
- l. Providing the State with online access to their enrollment information in real-time;

- m. Using the Department's enrollment and accounting system as the controlling system for Member enrollment and demographic information;
- n. Updating enrollment and eligibility information on a daily basis solely based on the EDI 834 transaction file sent from the Department to the Contractor for the plan population;
- o. Agreeing to complete a full reconciliation between the Department's enrollment system and the Contractor's eligibility system monthly (file layout information can be found within RFP Attachment 33, Outbound File Layouts);
- p. Maintaining a dedicated team to manually review enrollment and eligibility transactions that do not upload to the Contractor's system and report transactions that did not process in a format acceptable to the Department within one Business Day of discovery; and

5.8 Direct-Pay Enrollment Option

When enrollees retire or are no longer eligible for the NYS Dental Plan, they can continue coverage under COBRA for up to 36 months or choose a Direct-Pay Dental Plan with the current Contractor.

- 5.8.1 The Contractor must provide a Direct-Pay enrollment option to Plan retirees and enrollees that are no longer eligible for the NYS Dental Plan. Premium would be paid directly to the Contractor by the retiree or enrollee.

5.9 Claims Processing

The Contractor is required to process all claims submitted under the Dental Plan.

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

- a. Maintaining a claims processing center located in the Continental United States staffed by fully trained claims processors and supervisors.
- b. Verifying that the Dental Plan's benefit design has been loaded into the system appropriately to adjudicate and calculate cost-sharing and other edits correctly.
- c. Developing and maintaining claim payment procedures, guidelines, and system edits (i.e., control measures to prevent unauthorized payments) that guarantee the accuracy of claim payments for covered expenses only, utilizing all edits as approved by the Department. The Contractor's system must ensure that payments are made only for authorized services.
- d. Maintaining claims histories for twenty-four months online and archiving older claim histories for a minimum of six years and the balance of the Calendar year in which the claims were made with procedures to retrieve and load claim records easily (All Contract provisions related to the protection and security of the

Data will survive termination of the Contract. This requirement does not limit the Contractor's obligations pursuant to Appendix A to establish and maintain Records).

- e. Reversing all attributes of claim records processed in error.
- f. Agreeing that all claims data is the sole property of the State. Upon the request of the Department, the Contractor shall share appropriate claims data with other New York State Plan carriers and consultants for various programs (e.g., Other Clinical Management Programs) and the Department's Decision Support System (DSS) vendor at no additional cost. The Contractor cannot share, release, or make the claims data available to third parties, in any manner, without the prior written consent of the Department.
- g. Maintaining a backup system and disaster recovery plan for processing claims, compliant with the information security requirements set forth in Appendix C, Information Security Requirements, if the primary claims payment system fails or is not available or accessible.
- h. Analyzing and monitoring claim submissions to promptly identify errors, fraud, and/or abuse and reporting to the State, and appropriate authorities. Such information shall be provided in a timely fashion in accordance with a State-approved process.
- i. The Dental Plan shall be charged only for accurate (i.e., the correct dollar amount) claims payments for covered expenses. The Contractor will credit the Dental Plan the amount of any overpayments that Contractor agrees resulted from Contractor's (including subcontractors) error or fraud in the performance of Project Services. In cases of overpayments resulting from errors only found to be the responsibility of the State, or as a result of fraud and abuse by Members and/or Providers, the Contractor shall use reasonable efforts to recover any overpayments and credit 100% of any recoveries to the Dental Plan.
- j. Providing Members with hardcopy Explanation of Benefits (EOBs) in accordance with New York State Insurance Law §3234 and §3235. At a minimum, EOBs will include the following information:
 - i. Type of Service;
 - ii. Enrollee's name;
 - iii. Provider of service;
 - iv. Date of service;
 - v. Amount billed;
 - vi. Amount plan paid;

- vii. Amount Enrollee owes;
 - viii. Deductible, Annual Maximum and Lifetime Maximum responsibility;
 - ix. Information about the appeal process, including external appeal; and
 - x. Telephone number to call if Member has questions about claims.
- k. When the Plan is secondary to any other plan, reducing payment under the Dental Plan so that the total of all payments or benefits payable under the Dental Plan and the other plan is not more than the reasonable and customary charge for services received;
 - l. Providing the Department direct, secure access to the Contractor's claims system through any online web-based reporting tools, to authorized Department representatives;
 - m. Submitting a file including all processed claims to the Department's DSS vendor no later than twelve calendar days following the end of each calendar month, including the month following Contract terminates; and
 - n. Integrating appeal decisions into the claims processing system.

5.10 Plan Audit and Fraud Protection

- 5.10.1 The Contractor must have a strong audit presence throughout its organization. Throughout the term of the Contract, the Contractor shall provide fraud and abuse detection and prevention services at least at the same level and using the same tools, software, and techniques as used for its other dental insurance plans that are regulated by the New York State DFS. If the Contractor has no such dental insurance plans, the Contractor shall provide fraud and abuse detection and prevention services at least at the same level and using the same tools, software, and techniques as used for its dental insurance plans that are regulated by the insurance department of another state. The Contractor is responsible for the recovery of benefit payments resulting from fraud and/or abuse to the extent possible as determined by the Department.
- 5.10.2 The Contractor must conduct routine and targeted audits of Providers. On-site audits must also be conducted upon request by the Department and/or OSC, or when information is received by the Contractor that indicates a pattern of conduct by a Provider that is not consistent with the Dental Plan benefit design and objectives. Any modifications to the proposed audit program must receive written prior approval by the State.
- 5.10.3 The Contractor must utilize payment integrity algorithms and software to monitor waste, fraud, and abuse in the Dental Plan at no extra cost to the Department.
- 5.10.4 The Contractor must inform the Department in writing of any allegation or other indication of potential fraud and/or abuse identified within seven Business Days of receipt of such allegations or identification of such potential fraud and/or abuse. The

Department must be fully informed of all fraud and/or abuse investigations impacting the Plan upon commencement, regardless of whether the individual fraud and/or abuse investigation has a material financial impact to the State.

- 5.10.5 The Contractor shall cooperate with all Department and/or OSC audits whether conducted by State staff or by a third party on the Department's or OSC's behalf. Cooperation shall be consistent with the requirements of *Standard Clauses for New York State Contracts* (Appendix A), *Standard Clauses for All Department Contracts* (Appendix B), and *Information Security Requirements* (Appendix C), including the provision of access to protected health information and all other confidential information when required for audit purposes as determined by the Department and/or OSC as appropriate. The Contractor must respond to all State (including OSC) audit requests for information and/or clarification within fifteen Business Days. The Contractor must perform timely reviews and respond within a period specified by the Department to preliminary findings submitted by the Department or the OSC audit unit in accordance with the contractual requirements. Use of statistical sampling of claims and extrapolation of findings resulting from such samples shall be acceptable techniques for identifying claims errors. The Contractor shall facilitate audits, including on-site audits, as requested by the Department or OSC.
- 5.10.6 The Contractor shall remit to the Department 100% of audit findings that are agreed by the Contractor to be the result of Contractor (including subcontractors) error or Contractor (including subcontractors) fraud in the performance of Project Services within thirty days of the issuance of the final audit report including the response from the Contractor. Additionally, the Contractor shall remit 100% of any other Provider and Member audit recoveries to the Department as applicable within thirty days of receipt. Remittances shall be credited to the subsequent Administrative Fee invoice.
- 5.10.7 The Contractor must agree that audit activity may include, but not necessarily be limited to, the following activities:
- a. Review of the Contractor 's activities and records relating to the documentation of its performance under the Contract in areas such as determination of Enrollee or Dependent eligibility and application of various Department program administrative features (e.g., dependent survivor benefits, and reasonable adjudication of disabled dependent status);
 - b. Comparison of the information in the Contractor 's enrollment file to that on the enrollment reports issued to the Contractor by the Department; and
 - c. 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 in accordance with Section 5.6 of this Contract.
- 5.10.8 The Contractor shall maintain and make available documentary evidence necessary to perform the reviews. Documentation maintained and made available by the Contractor may include, but is not limited to, source documents, books of account, subsidiary records and supporting work papers, claim documentation, pertinent contracts, key subcontracts, provider agreements, and correspondence.

- 5.10.9 The Contractor shall make available for audit all Data in its computerized files that is relevant to and subject to the Contract. 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.
- 5.10.10 The Contractor shall, at the Department's request, and in a time period specified by the Department, search its files, retrieve information and records, and provide to the auditors such documentary evidence as they require. The Contractor shall make sufficient resources available for the efficient performance of audit procedures.
- 5.10.11 The Contractor shall comment on the contents of any audit report prepared by the Department and transmit such comments in writing to the Department within thirty Calendar days of receiving any audit report. The response will specifically address each audit recommendation. If the Contractor agrees with the recommendation, the response will include a work plan and timetable to implement the recommendation. If the Contractor disagrees with an audit recommendation, the response will give all details and reasons for such disagreement. Resolution of any disagreement as to the resolution of an audit recommendation shall be subject to the Dispute Resolution provision set forth in Standard Clauses for All Department Contracts (Appendix B).
- 5.10.12 If the Contractor has an independent audit performed of the records relating to this Contract, a certified copy of the audit report shall be provided to the Department within ten Business Days after receipt of such audit report by the Contractor.

5.11 Appeals Process

- 5.11.1 Members and Providers are permitted to appeal denied services on the basis of medical necessity, experimental or investigational, or if an out-of-network treatment. The Contractor is required to provide an internal and external formal written appeals process to address these appeals. For detailed information regarding the current NYS Dental Plan's appeal process, please see the following certificate (appeal rights apply equally to all eligible groups): <https://www.cs.ny.gov/employee-benefits/nyship/group/1/10/3/dental/index.cfm?page=8>
- 5.11.2 The Contractor must establish a formal written appeals resolution procedure which includes the responsibility for notifying Members of their rights to appeal and the steps necessary for filing an appeal.
- 5.11.3 The Contractor must establish an expedited appeals resolution procedure to be followed if a Member or someone on behalf of a Member requests an urgent appeal review, where a delay in treatment could significantly increase risk to health, the ability to regain maximum function, or cause severe pain. Such appeals, by New York State Law, will be decided within no more than 72 hours upon receipt of the appeal.
- 5.11.4 The Contractor's internal and external appeals processes must be consistent with New York State Insurance Law and DFS model language:

5.11.5 The Contractor must respond to all external appeals on behalf of the Department as requested by DFS through a process that provides an opportunity for Members to appeal when denied coverage on the basis that a service is not medically necessary or is an experimental, investigational service, or out-of-network treatment.

5.12 Pre-Determination of Benefits

5.12.1 Pre-determination of benefits is the process in which the Contractor reviews the treatment and estimates the benefits for Covered Services before the services are rendered. Contractors are required to develop a Pre-Determination of Benefits Procedure for services received from a Participating Provider or a Non-Participating provider. A Pre-determination of Benefits is recommended for any non-emergency dental surgery, prosthetic, or orthodontic procedure. A Treatment Plan describing the proposed course of treatment and the estimated costs should be submitted to the Contractor before the course of treatment is begun.

5.12.2 The Contractor must have the capacity to pre-determine Plan required services.

5.12.3 The Contractor must provide an adequate staff of utilization review coordinators trained to perform a pre-determination of services.

5.12.4 The Contractor must follow-up in writing once a determination is made. This notice will be mailed to the Member and transmitted to the Provider within twenty-four (24) hours from the time of the determination.

5.13 Transition and Termination of Contract

To ensure that the transition to a successor entity provides Members with uninterrupted access to Dental Plan benefits and associated customer services, the Contractor is required to provide Contractor-related obligations and deliverables (Transition Services) to the Dental Plan until the final Plan Claim (as defined in Section 7.1 of this Contract) incurred during the Contract term is submitted to the Department for payment. The Department anticipates that certain claims incurred during the Contract term will not have been settled before the end date (Open Claims). Transition Services are organized into two phases: Phase One and Phase Two. Phase One consists of those Transition Services that are provided prior to the Contract termination or expiration (End Date). Phase Two consists of those Transition Services that are required after the End Date until the Contractor invoices the Department for the final Plan Claim incurred during the Contract term and payment submitted by the Department. Collectively, Phase One and Phase Two comprise the Transition Period. The obligations and responsibilities of the Contractor with regard to this Section, Transition and Termination of Contract, shall survive termination of the Contract and will remain in effect until all Open Claims have been settled to the satisfaction of the Department.

5.13.1 The transition process shall be governed as follows:

- a. Length of Transition Period:

- i. Phase One - Phase One of the Transition Period shall commence six months prior to the Contract End Date or immediately if the Contract is terminated pursuant to Appendix B section 31 (Termination). Phase One is concluded on the Contract End Date or termination date provided pursuant to Appendix B section 31.
- ii. Phase Two - Phase Two of the Transition Period will commence on the first day after the Contract End Date or termination date provided pursuant to Appendix B section 31 and will continue until all claims incurred as of the End Date or termination date, pursuant to APPENDIX B - Standard Clauses for all Department Contracts section 31, Termination, have been settled (i.e., closed and payment submitted by Department to the Contractor).
- iii. The Department reserves the right to amend the length of Phase One or Two Transition Period upon thirty days prior written notice to the Contractor.

b. No Interruption in Service:

- i. At all times during Phase One of the Transition Period and unless directed otherwise in writing by the Department, the Contractor shall continue all contractual obligations set forth in the Contract in addition to those set forth in the section. The Contractor shall be required to meet its contractual obligations notwithstanding the issuance of a termination notice by the State.
- ii. During Phase Two of the Transition Period, the Contractor shall continue all activities necessary to complete the processing and settlement of all Open Claims as set forth below.

c. Transition Plan

- i. Within thirty calendar days of receipt of a notice of termination of the Contract or six months prior to the expiration of the Contract, whichever event occurs first, the Contractor shall provide to the Department a detailed written plan for transition (Transition Plan) for review and approval. The Transition Plan shall outline the Contractor's plan to transition the tasks, milestones and deliverables associated with the Project Services to the Department, a third party or the successor entity. The Transition Plan shall detail the Phase One and Phase Two activities. Contractor agrees to amend the Transition Plan to include all other information deemed reasonable and necessary by the Department. There will be no additional charge to the Department for the development or implementation of the Transition Plan.
- ii. Within fifteen Business Days from receipt of the Contractor's proposed Transition Plan, the Department shall either approve the Transition Plan or

notify the Contractor, in writing, of the changes required to the Transition Plan to make it acceptable to the Department.

- iii. Within fifteen Business Days from the Contractor's receipt of the required changes, the Contractor shall incorporate said changes into the Transition Plan and submit such revised Transition Plan to the Department for approval.
- iv. The Transition Plan, at a minimum, shall describe the tasks, timeframes, milestones, and deliverables by Phase associated with:
 - 1) Transitioning of the Dental Plan Project Services' data. All such data transfers must be approved by the Department and provided in a format acceptable to the Department. This requirement includes, but is not limited to, providing a minimum of one year of historical Member claim data. Members' claim data shall consist of:
 - (a) Providers' names, types, addresses, zip codes, telephone numbers and tax identification numbers;
 - (b) Detailed coordination of benefits (COB) data;
 - (c) High-volume Provider data;
 - (d) Report formats;
 - (e) Pre-certification/prior Authorization approved-through dates; and
 - (f) Any other data the successor entity may need.
 - 2) The transitioning of the Dental Plan data shall at a minimum include:
 - (a) Providing a test file to the Department or a successor entity at least 22 weeks in advance of the End Date or within four weeks after notice of Termination is provided by the Department, to allow the Department, a third party or successor entity to address any formatting issues. Contractor will cooperate and coordinate with the Department, a third party or successor entity to address any issues in the test file.
 - (b) Providing one or more pre-production files at least twelve weeks prior to the End Date. The file will contain the above-described Members' claim data or additional data elements as specified by the Department. Contractor will cooperate and coordinate with the Department, a third party or successor entity to address any issues in the data files.

- (c) Providing a production file six weeks prior to the successor entity's Implementation Date. The Department will notify the Contractor of the successor entity's Implementation Date.
 - (d) Providing a second production file to the successor entity by the close of business three days prior to the End Date.
- 3) Transferring of information necessary to ensure continuity of a Member's on-going treatment or future treatment.
- 4) Incorporating a written plan for Knowledge Transfer. A Knowledge Transfer (KT) plan shall be developed by the Contractor for approval by the Department as part of the Transition Plan. This KT Plan will be incorporated into the overall Transition Plan's methods and timeframes and will outline mechanisms for transferring knowledge of Contractor's personnel to Department employees, a third party or the successor entity. As part of the KT, Contractor shall document relevant processes, procedures, methods, tools, and techniques of its personnel with special skills or responsibilities performed during the Contract.
- 5) A description of how the Contractor will implement the Transition Services for Phase One and Phase Two. Such description shall address how the Contractor will perform the tasks and services set forth below in Section 4 Administrative Proposal.

d. Transition Services

- i. "Transition Services" shall be deemed to include Contractor's responsibility for performing all tasks and services outlined in the Contract, and for transferring in a planned manner as specified in the approved Transition Plan all tasks and services to the State, a third party or successor entity. It is expressly agreed between the Parties that the level of service during Phase One of the Transition Period shall be maintained in accordance with all the terms and conditions of the Contract.
- ii. During Phase One and Phase Two, the Department shall continue to have access to key personnel of the Contractor's dedicated Account Team, maintain access to online systems and receipt of data/reports and other information regarding the Dental Plan as necessary to ensure Members are provided with uninterrupted access to benefits and associated customer services.
- iii. Phase One of the Transition Services shall include:
 - 1) All Project Services associated with processing of claims incurred on or before the Contract End Date. This obligation includes but is not limited to:

- (a) Paying claims, including but not limited to out-of-network claims, COB claims, and In-network claims. "In-network" refers to Providers that are part of the plan's network of Providers with which the Contractor has negotiated a discount;
 - (b) Reimbursing late-filed claims if warranted;
 - (c) Retaining NYBEAS access; and
 - (d) Continuing to provide updates on pending litigation and settlements that the Contractor or the New York State Attorney General's Office has/may file on behalf of the Dental Plan.
- 2) Providing the Department access to any online claims processing data and history and online reporting systems until the Contractor invoices the Department for the final Program Claim incurred during the Contract term and payment submitted by the Department unless the Department notifies the Contractor that access may be ended at an earlier date;
 - 3) Completing all reports required under Section 5.6 of this contract;
 - 4) Providing sufficient staff resources to address State audit requests and reports in a timely manner;
 - 5) Agreeing to fully cooperate with all Department and/or OSC audits consistent with the requirements of the Contract;
 - 6) Performing timely reviews and responses to audit findings submitted by the Department and the OSC in accordance with the requirements set forth in the Contract;
 - 7) Remitting reimbursement due to the Department upon final audit determination consistent with the process specified in the Contract;
 - 8) Receiving and applying enrollment updates and verifying enrollment;
 - 9) Keeping dedicated telephone lines open with adequate available staffing to provide customer service at the levels required in the Contract and adjust phone scripts, and transfer calls to the successor entity's lines during the Transition Period;
 - 10) Developing a strategy for addressing those Members in care with Providers that are not in the successor entity's network; and

11) Notifying Members currently in care with a Network Provider, per New York State guidelines, of their rights to continue to receive a network level of benefits if their Provider is not in the Contractor's network. In addition, for the first year of the Contract, the Contractor will commit to sending Provider disruption letters based on information received from the incumbent.

iv. Phase Two of the Transition Services shall include, but are not limited to, the following activities:

- 1) Process all Open Claims to final settlement;
 - (a) Paying claims, including but not limited to out-of-network claims, COB claims, and In-network claims. "In-network" refers to Providers that are part of a Dental Plan's network with which the Contractor has negotiated a discount;
 - (b) Reimbursing late-filed claims if warranted;
 - (c) Retaining NYBEAS access; and
 - (d) Continuing to provide updates on pending litigation and settlements that the Contractor or the New York State Attorney General's Office has/may file on behalf of the Plan.
- 2) Continuing to provide the Department access to any online claims processing data and history and online reporting systems until the Contractor invoices the Department for the Final Program Claim incurred during the Contract term and payment submitted by the Department, unless the Department notifies the Contractor that access may be ended at an earlier date;
- 3) Completing all reports required under Section 5.6 of this Contract;
- 4) Providing sufficient staff resources to address State audit requests and reports in a timely manner;
- 5) Agreeing to fully cooperate with all Department and/or OSC audits consistent with the requirements set forth in the Contract;
- 6) Performing timely reviews and responses to audit findings submitted by the Department and OSC's audit unit in accordance with the requirements set forth in the Contract;
- 7) Remitting reimbursement due the Plan upon final audit determination consistent with the process specified in the Contract;
- 8) Receiving and applying enrollment updates;

- 9) Keeping dedicated telephone lines open for a minimum of six months (unless otherwise agreed to in writing by the Department and Contractor), with adequate available staffing to provide customer service at the same levels provided prior to the End Date, adjusting phone scripts;
- 10) Transferring calls to the successor Contractor's lines during this period; and
- 11) Providing sufficient staffing to ensure Members continue to receive appropriate customer service and clinical management service after the End Date.

e. Compensation for Transition Services

i. Phase One:

No additional compensation outside the monthly Administrative Fee will be paid to the Contractor for the performance of the Phase One Transition Services. As indicated below in subsection (c), the Department shall retain the final monthly Administrative Fees payment from the Contractor until completion of all Transition Plan requirements.

ii. Phase Two:

- 1) Contractor will receive no Administrative Fees but will be reimbursed for all claims settled (i.e., closed) per Section 7.3 of this Contract.
- 2) Reimbursement for claims will be made on a monthly basis upon the Department's receipt of an accurate invoice.

f. Department Responsibilities for Transition

The Department shall assume responsibility for the project management activities for the Transition. The Department shall appoint a project manager to be responsible for coordinating Transition activities, maintaining the transition task schedule, and approving transition deliverables. Weekly project review meetings shall be held with representatives of the Contractor, Department, and the third party or the successor entity. The Department shall also ensure that all Departmental and third-party resources (e.g., technical, administrative) deemed necessary by the Transition Plan are available to carry out tasks and functions defined in the Transition Plan and in accordance with the defined timelines specified in the Transition Plan.

g. Cooperation

Contractor shall cooperate with the Department to facilitate a smooth and orderly transition. Periodic project review meetings shall be held with representatives of the Contractor, the Department, and the successor entity.

SECTION VI: PERFORMANCE GUARANTEES

The Contractor acknowledges and agrees that failure to perform the Project Services in such a manner which either meets or exceeds any of the Performance Guarantee(s), as set forth herein, shall result in a corresponding reduction(s) in fee to the Contractor for failure to meet each applicable Performance Guarantee.

Upon such determination of amounts due pursuant to this Section, the Department shall notify the Contractor, in writing, and the Contractor shall apply such amounts as a credit against the Monthly Administrative fee within 30 Calendar Days of receiving such notification by the Department.

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 Contract.

6.1 Implementation Guarantee and Credit Amount

6.1.1 Performance Guarantee: The Contractor guarantees that all of the Implementation requirements listed in Section 5.2 of the Contract will be in place on or before the Services Start Date following completion of the Implementation Period, with the exception of opening the Dedicated Call Center and completing work on the customized website. The Dedicated Call Center must be opened at least forty-five (45) calendar days prior to the Services Start Date. The customized website must be live and operational at least forty-five (45) calendar days prior to the Services Start Date. This guarantee is not subject to the limitation of liability provisions of the Contract.

6.1.2 Credit Amount: The amount to be forfeited by the Contractor for each Calendar day or part thereof, that all Implementation requirements are not met is [REDACTED] a day for each Calendar day the guarantee is not met.

6.2 Enrollment Management Guarantee and Credit Amount

6.2.1 Performance Guarantee: The Contractor must guarantee 100% of all Dental Plan Services enrollment records that meet the quality standard for loading, will be loaded into the Contractor's enrollment system within twenty-four hours of release by the Department.

6.2.2 Credit Amount: The amount to be forfeited by the Contractor for each twenty-four-hour period or part thereof in which enrollment records that meet the quality standards for loading are not loaded in the Contractor's enrollment system after such enrollment records have been released by the Department is [REDACTED] for each twenty-four-hour period or part thereof in which this guarantee is not met.

6.3 Call Center Response Time Guarantee and Credit Amount

6.3.1 Performance Guarantee: The Contractor guarantees that [REDACTED] of incoming calls to the Contractor's telephone line must be answered by a CSR within thirty seconds. Response time is defined as the time it takes incoming calls to the Offeror's telephone line to be answered by a customer service representative. The call center telephone response time shall be reported to the Department on a weekly basis for the first month of the Contract, and then reported monthly and calculated quarterly for the remainder of the Contract.

6.3.2 Credit Amount: The amount to be forfeited by the Contractor for each quarter in which the number of phone calls answered within thirty seconds falls below [REDACTED] a quarter for each annual quarter in which this guarantee is not met.

6.4 Availability Guarantee and Credit Amount

6.4.1 Performance Guarantee: The Contractor guarantees that the Contractor's telephone line must be operational and available to Members and Providers equal to or better than [REDACTED] percent of the Contractor's required up-time from 8:00 am through 5:00 p.m. ET, Monday through Friday, except on legal holidays observed by the State. The telephone line availability shall be reported monthly and calculated quarterly for the remainder of the Contract.

6.4.2 Credit Amount: The amount to be forfeited by the Contractor for each quarter in which the Contractor's telephone line is not operational and available to Members and Providers [REDACTED] a quarter for each quarter in which this guarantee is not met.

6.5 Telephone Abandonment Rate Guarantee and Credit Amount

6.5.1 Performance Guarantee: The Contractor guarantees that no more than [REDACTED] of callers to the Contractor's telephone line will disconnect a call prior to the call being answered by a CSR. The telephone abandonment rate shall be reported weekly for the first month after the Services Start Date, and then reported monthly and calculated quarterly for the remainder of the Contract.

6.5.2 Credit Amount: The amount to be forfeited by the Contractor for each quarter in which more than [REDACTED] of callers disconnect a call prior to the call being answered by a CSR is [REDACTED] a quarter for each quarter in which this guarantee is not met.

6.6 Telephone Blockage Rate Guarantee and Credit Amount

6.6.1 Performance Guarantee: The Contractor guarantees that no more than [REDACTED] of incoming calls to the Contractor's telephone line shall be blocked by a busy signal. The telephone blockage rate shall be reported weekly for the first month after the Services Start Date, and then reported monthly and calculated quarterly for the remainder of the Contract.

6.6.2 Credit Amount: The amount to be forfeited by the Contractor for each quarter in which more than [REDACTED] of incoming calls to the Contractor's telephone line are blocked by a busy signal is [REDACTED] a quarter for each quarter in which this guarantee is not met.

6.7 Reporting Services Guarantee and Credit Amount

- 6.7.1 Performance Guarantee: The Contractor guarantees that that all Dental Plan management reports and claim files listed in Program Reporting (RFP Attachment 17) will be accurate and delivered to the Department no later than their respective due dates.
- 6.7.2 Credit Amount: The amount to be forfeited by the Contractor for each Calendar day the Department has not received the Dental Plan management report and claims file by their respective due date is [REDACTED] per Calendar Day per report.

6.8 Claims Payment Accuracy Guarantee and Credit Amount

- 6.8.1 Performance Guarantee: The Contractor guarantees that Claims payment accuracy must be achieved for a minimum of [REDACTED] of all claims processed and paid each Calendar Year.
- 6.8.2 Credit Amount: The amount to be forfeited by the Contractor for each year in which [REDACTED] of claims payment accuracy is not achieved as determined based on an annual audit conducted by the Department is [REDACTED] for each Calendar Year this guarantee is not met.

6.9 Claims Processing Guarantee - Twenty-Four (24) Calendar Days Turnaround Time and Credit Amount

- 6.9.1 Performance Guarantee: The Contractor guarantees that no less than [REDACTED] of submitted claims received by the Contractor that require no additional information in order to be correctly processed shall be processed within twenty-four (24) calendar days from the date the claim is received electronically or in the Contractor's designated post office box to the date of Claim Adjudication.
- 6.9.2 Credit Amount: The amount to be forfeited by the Contractor for each annual quarter in which less than [REDACTED] of claims that require no additional information in order to be correctly processed, are not processed within twenty-four Calendar Days from either the date the claim is received electronically or in the Contractor's designated post office box to the date the payment is transmitted to the Provider or mailed to the Member as calculated on a quarterly basis is [REDACTED] a quarter for each quarter in which this guarantee is not met.

6.10 Network Access Urban Areas Guarantee and Credit Amount

- 6.10.1 Performance Guarantee: The Contractor guarantees that the Contractor's network cannot provide less than the required network Access-Urban requirements as outlined in Contract Section 5.3.1. The access standard is not an overall aggregate of Dental Provider access in Urban Areas (i.e., there is one standard for General Dentists and a standard for each of the individual Specialty types as outlined in Contract Section 5.3.1).

6.10.2 Credit Amount: The amount to be forfeited by the Contractor for each quarter in which urban Enrollees do not have Dental Provider access that meets the network Access-Urban Areas requirements as outlined in Section 5.3.1 is [REDACTED] for each Dental Provider type, calculated quarterly. The amount to be forfeited by the Contractor shall be applied only once per quarter for General Dentistry and for each of the individual Specialist types if the Offeror fails to maintain required access in Urban Areas.

6.11 Network Access Suburban Areas Guarantee and Credit Amount

6.11.1 Performance Guarantee: The Contractor guarantees that the Contractor's network cannot provide less than the required network Access-Suburban requirements as outlined in Section 5.3.1. The access standard is not an overall aggregate of Dental Provider access in Suburban Areas (i.e., there is one standard for General Dentists and a standard for each of the individual Specialty types as outlined in Section 5.3.1).

6.11.2 Credit Amount: The amount to be forfeited by the Contractor for each annual quarter in which suburban Enrollees do not have Dental Provider access that meets any network Access-Suburban Areas requirements as outlined in Section 5.3.1 is [REDACTED] for each Dental Provider type, calculated quarterly. The amount to be forfeited by the Contractor shall be applied only once per quarter for General Dentistry and for each of the individual Specialist types if the Offeror fails to maintain required access in Suburban Areas.

6.12 Network Access Rural Areas Guarantee and Credit Amount

6.12.1 Performance Guarantee: The Contractor guarantees that the Contractor's network cannot provide less than the required network Access-Rural requirements as outlined in Section 5.3.1. The access standard is not an overall aggregate of Dental Provider access in Rural Areas (i.e., there is one standard for General Dentists and a standard for each of the individual Specialty types as outlined in Section 5.3.1).

6.12.2 Credit Amount: The amount to be forfeited by the Contractor for each annual quarter in which rural Enrollees do not have Dental Provider access that meets any network Access-Rural Areas requirements as outlined in Section 5.3.1 is [REDACTED] for each Dental Provider type, calculated quarterly. The amount to be forfeited by the Contractor shall be applied only once per quarter for General Dentistry and for each of the individual Specialist types if the Offeror fails to maintain required access in Rural Areas.

6.13 Transition and Termination Guarantee and Credit Amount

6.13.1 Performance Guarantee: The Contractor guarantees that all Transition Plan requirements outlined in Section 5.13 of this Contract will be completed in the required time frames to the satisfaction of the Department.

6.13.2 Credit Amount: The amount to be forfeited by the Contractor for each day or part thereof that the Transition Plan requirements are not met is [REDACTED] for each day this guarantee is not met.

- 6.14 Network Recruitment Guarantee: Contractor will forfeit [REDACTED] if it does not implement its dental provider recruitment plan as outlined in Section 5.4.1h of its Technical Proposal response.

SECTION VII: PAYMENT FOR SERVICES

7.1 Dental Plan Claims

- 7.1.1 Throughout the term of the Contract, the Contractor will be paid on a monthly basis for Dental Plan claims, including Participating Provider and Non-Network claims.
- 7.1.2 Participating Provider claims will be reimbursed based on the Contractor's negotiated reimbursement rates with providers.
- 7.1.3 The Non-Network claims are to be processed, for reimbursement to Enrollees and payment by the Department, based on the rates set forth in the Out-of-Network Reimbursement Schedule [REDACTED]

- 7.2 This Agreement is not subject to Article XI-A of NYS Finance Law. The Contractor agrees that Program Services provided under the Agreement shall continue in full force and effect for a minimum of at least thirty (30) Calendar Days beyond the payment due date. If after the thirty-fifth (35) Calendar Day, after receipt of an accurate invoice and claims data file, the Contractor has not yet received payment from the State for said invoice, the Contractor may proceed under the Dispute Resolution provision in Appendix B and the Agreement shall remain in full force and effect until such final decision is made, unless the Parties can come to a mutual agreement, in which case, the Agreement shall also remain in full force and effect.

7.3 Administrative Fees

- 7.3.1 The Contractor will be bound by its quoted Administrative Fee, as proposed in the Contractor's Financial Proposal, which is incorporated into [REDACTED], for the entire term of the Contract, unless amended in writing, subject to OSC approval.
- 7.3.2 Each month, the Contractor shall calculate the total Administrative Fee payable to the Contractor by multiplying the per Enrollee per month fee by the average number Enrollees in force for the assessed month as reported by the Contractor. The average number Enrollees for the assessed month reported by the Contractor shall be based on the enrollment files and enrollment updates the Department transmits to the Contractor as set forth in Section 5.7 of this Contract.
- 7.3.3 The Department reserves the right to adjust the Administrative Fee charged by the Contractor based on a reconciliation of the Enrollee counts reported from the Department's NYBEAS by the Enrollee counts utilized by the Contractor to calculate the monthly Administrative Fee. The reconciliation will be performed by the Department on an Annual basis using the average Enrollee count for the respective Dental Plan Services Program Year. However, the Department may perform additional reconciliations throughout a given year if the average monthly Enrollee counts utilized

by the Contractor differ significantly from the Department's Enrollee counts, as reflected in NYBEAS. In addition, the Administrative Fee due shall be adjusted on an Annual basis based on penalties due to the Department or payments due from the Contractor in accordance with the Performance Guarantees form [REDACTED]

7.3.4 Any changes requested by the Contractor throughout the term of Agreement are at the sole discretion of the Department and are subject to approval by the Office of the Attorney General and the Office of the State Comptroller.

7.4 Assessments

Assessments are defined as surcharges or taxes charged by federal, state, and local government entities based on claims or membership. The State will be responsible for all such Assessments.

7.5 The Contractor shall invoice the Department each month for Dental Plan Claims and Dental Administrative Fee payment in accordance with the provisions set forth herein, for Project Services rendered, together with full supporting detail(s) to the State's satisfaction. Such invoice(s) shall be submitted on a monthly basis to accountspayable@ogs.ny.gov. The subject line should include the Invoice Number and the term "Department of Civil Service. The invoice must include:

7.5.1 Name of the NYS Agency being billed;

7.5.2 Name of the vendor and NYS Statewide Financial System (SFS) Vendor Number; and

7.5.3 Contract number.

7.6 After review and approval of the Contractor's invoice, the Department shall submit it to OSC for payment. OSC shall render payment for invoices under the Agreement in accordance with ordinary State procedures and practices. 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. The Contractor acknowledges that timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article XI-A of the State Finance Law. Submission of an invoice and payment thereof shall not preclude the Department, as applicable, from reimbursement or demanding a price adjustment in any case where Project Services as delivered are found to deviate from the terms and conditions of the Agreement.

SECTION VIII: INSURANCE REQUIREMENTS

8.1 Subject to any modifications or clarification as stated in Contract SECTION III: MODIFICATIONS AND CLARIFICATIONS, the Amended RFP Section 4.6 sets forth the applicable insurance requirements that must be maintained by the Contractor during the Contract term and is hereby expressly made a part of this Contract as if fully set forth herein.

SECTION IX: NOTICES

- 9.1 The Contractor shall immediately notify the Department upon learning of any situation that can reasonably be expected to adversely affect the rendition of Project Services.
- 9.2 All notices permitted or required hereunder shall be in writing and shall be transmitted via certified or registered United States mail, return receipt requested; by hand delivery; by expedited delivery service; or by e-mail. Such notification must be sent to:

State of New York Department of Civil Service

Name: Dan Yanulavich
Title: Director, Employee Benefits Division
Address: Swan Street Building, Core 1, Albany, NY 12239
Telephone Number: 518-402-4709
E-Mail Address: Daniel.Yanulavich@cs.ny.gov

Additional Notice to:

Name: Eugene Sarfoh
Title: General Counsel
Address: Empire State Plaza, Agency Bldg. 1, Floor 20, Albany, NY 12242
Telephone Number: 518-473-1662
E-Mail Address: eugene.sarfoh@cs.ny.gov

Anthem HealthChoice Assurance, Inc.

Name: Jason O'Malley
Title: Regional Vice President, Sales
Address: 15 Plaza Drive, Latham, New York 12110
Telephone Number: 518-713-6190
E-Mail Address: jason.o'malley@empireblue.com

- 9.3 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 email, upon receipt.
- 9.4 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.

SECTION X: ADDITIONAL PROVISIONS

10.1 Work in The Continental United States of America:

All work performed by Contractor personnel under this Contract must be performed within the Continental United States of America.

10.2 Information Classification:

The Department has determined that the State information which the Contractor will either host, maintain, or have access to has an impact level of: Confidentiality = High, Integrity = High, and Availability = High; and requires the Contractor to have appropriate security controls pursuant NIST SP 800-53B, Control Baselines for Information Systems and Organizations, implemented to uniformly protect the confidentiality, integrity, and availability of the information entrusted to the Contractor, unless the State indicates otherwise.

10.3 Continued Data Access:

The Department has determined that the period of time that the Contractor must provide the Department continued access to Data beyond the expiration or termination of the Agreement is no less than three years. All Contract provisions related to the protection and security of the Data will survive termination of the Contract. This provision does not limit or lessen the time period or Contractor's obligations pursuant to Appendix A to establish and maintain Records.

10.4 Use and Disclosure of Protected Health Information

- a. The Contractor acknowledges that it is a "Business Associate" as that term is defined in the HIPAA implementing regulations at 45 CFR 160.103. of the Department as a consequence of the Contractor's provision of Project Services on behalf of the Department within the context of the Contractor's performance under the resulting Contract and that the Contractor's provision of Project Services will involve the disclosure to the Contractor of individually identifiable health information from the Department or other service providers on behalf of the Department, as well as the Contractor's disclosure to the Department of individually identifiable health information as a consequence of the Project Services performed under the resulting Contract. As such, the Contractor, as a Business Associate, will be required to comply with the provisions of this Section.
- b. For purposes of this Section, 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 the resulting Contract, 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 its capacity as a Business

Associate and as a consequence of its performance under the resulting Contract is referred to herein collectively as "Department's PHI."

- c. 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), respectively. The Contractor further acknowledges that:
 - i. 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 the resulting Contract, 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 the resulting Contract; and
 - ii. Contractor is a "covered entity" under HIPAA in connection with its provision of certain services under the resulting Contract. To the extent Contractor acts as a HIPAA "Business Associate" of the group health plans identified as "covered entities", the Contractor shall adhere to the requirements as set forth herein. Contractor is responsible to obtain from Members and Enrollees all consents and/or authorizations, if any, required for Contractor to perform the services hereunder and for the use and disclosure of information, including the Department's PHI, as permitted under the resulting Contract.
- d. 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 the Contract. In addition, the Contractor may use and/or disclose 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 Contract if such use is necessary for the Contractor's proper management and administration or to carry out the Contractor's legal responsibilities, or if such disclosure is required by law or the Contractor obtains reasonable assurances from the person to whom the information is disclosed that it shall be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Contractor of any instances of which it is aware in which the confidentiality of the information has been breached. Additionally, the Contractor may use and/or disclose the Department's PHI, as appropriate:

- i. For treatment, payment and health care operations as described in 45 CFR Section 164.506(c)(2), (3) or (4); and
 - ii. To de-identify the information or create a limited data set in accordance with 45 CFR §164.514, which de-identified information or limited data set may, consistent with this section, be used and disclosed by Contractor only as agreed to in writing by the Department and permitted by law.
- e. 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 the resulting Contract 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.
- f. Safeguards: The Contractor shall use appropriate, documented safeguards to prevent the use or disclosure of the Department's PHI otherwise than as provided for in the resulting Contract. 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 CFR §§ 164.308, 164.310, and 164.312, along with corresponding policies and procedures, as required by 45 CFR § 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 the resulting Contract 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.
- g. Breach Notification: In addition to the Disclosure of Breach requirements specified in Standard Clauses for All Department Contracts (Appendix B), the following provisions shall apply:
 - i. 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 the Contract, 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 the resulting Contract is presumed to be a breach unless the Contractor demonstrates that there is a low probability that Department's PHI has been compromised based on the Contractor's risk assessment of at least the following factors:
 - 1) The nature and extent of Department's PHI involved, including the types of identifiers and the likelihood of re-identification;
 - 2) The unauthorized person who used Department's PHI or to whom the disclosure was made;

- 3) Whether Department's PHI was actually acquired or viewed; and
 - 4) The extent to which the risk to Department's PHI has been mitigated.
- ii. Required Information: In addition to the information required in Standard Clauses for All Department Contracts (Appendix B), Disclosure of Breach, the Contractor shall provide the following information to the Department within the time period identified in Standard Clauses for All Department Contracts (Appendix B), Disclosure of Breach, 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 Calendar Days from the date of discovery:
- 1) the date of the breach incident;
 - 2) the date of the discovery of the breach;
 - 3) a brief description of what happened;
 - 4) a description of the types of unsecured PHI that were involved;
 - 5) identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the breach;
 - 6) 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
 - 7) any other details necessary to complete an assessment of the risk of harm to the individual.
- iii. The Contractor 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 United States Department of Health and Human Services and the media, as required by 45 CFR Part 164.
- iv. 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.
- v. The Contractor shall mitigate, to the extent practicable, any harmful effects from any use or disclosure of PHI by the Contractor not permitted by the Contract.

- h. Associate's Agents: The Contractor shall require all of its agents or 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 the Contract.
- i. 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.
- j. 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.
- k. 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.
- l. Termination: This Contract 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 Section. Data return and destruction upon contract termination is governed by Information Security Requirements, Appendix C.
- m. Indemnification: Notwithstanding the provisions in Standard Clauses for All Department Contracts (Appendix B), the Contractor agrees to indemnify, defend and hold harmless the State and the Department and its respective employees, officers, agents, or other members of its workforce (each of the foregoing hereinafter referred to as "Indemnified Party") against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this section, Use and Disclosure of Protected Health Information, or from any acts or

Contract Number: **C000755**

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

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

Contractor Certification: By signing I certify my express authority to sign on behalf of myself, my company, or other entity and full knowledge and acceptance of this Agreement and all appendices. By signing, I affirm my understanding of and agreement to comply with the Department's procedures relative to the Procurement Lobbying Law as required by State Finance Law §139-j and §139-k.

**NEW YORK STATE
DEPARTMENT OF CIVIL SERVICE**

Name: Rebecca A. Corso
Title: Executive Deputy Commissioner
By: Rebecca A. Corso
Date: 2/6/24

**ANTHEM HEALTHCHOICE
ASSURANCE, INC.**
FEIN: 23-7391136

Name: Jason O'Malley
Title: Regional Vice President
By: Jason O'Malley
Date: 2/1/2024

Approved as to form:

Letitia James
ATTORNEY GENERAL

By: _____
Date: _____

Approved:

Thomas P. DiNapoli
STATE COMPTROLLER

By: _____
Date: _____

APPROVED DEPT. OF AUDIT & CONTROL
Mar 28 2024 Brian Fuller
FOR THE STATE COMPTROLLER

ATTACHMENT 1

REQUEST FOR PROPOSAL

ENTITLED:

“Dental Plan Services”

Official Responses to Offerors’ Questions

August 1, 2023

Question Number	RFP Page #	Section Reference	Question	Response
1	5	1.3, Overview of the Dental Plan	What is the total eligible population; do you foresee any changes to the population count?	As referenced on Page 6 of the Dental Plan Services RFP: “The Employee Benefits Division (EBD) of the Department of Civil Service is responsible for administration of the Plan which currently covers approximately 106,000 Enrollees, with approximately 234,000 covered individuals.” The eligible population count is subject to change.
2	5	Appendix A, Section 13	We have an Administrative Services Agreement (“ASA”) specifically tailored to self-funded dental services. We recommend that the ASA be the governing contractual document and that we work with the Department to incorporate any mutually agreed upon terms from Appendix A into the ASA. Alternatively, we can agree to include the ASA as an Appendix/Statement of Work to Appendix A. Is the Department amenable to this?	The Department is not amenable to an Offerors’ Administrative Services Agreement becoming the governing contractual agreement or an Appendix/Statement of Work to the resulting contract. Per section 4.1 of the RFP “Formal Offer Letter, “Except as otherwise permitted under section 2.1(6), Bid Deviations, the Offeror must accept the terms and conditions as set forth in this RFP, Standard Clauses for New York State Contracts (Appendix A), Standard Clauses for All Department Contracts (Appendix B), Information Security Requirements (Appendix C) and Glossary of Defined Terms (Attachment 15), and agree to enter into a Contractual Agreement with the Department containing, at a minimum, the terms and conditions identified in this RFP and appendices as cited herein.”
3	6	1.3	Can you confirm that active employees are not required to make a premium contribution for coverage for themselves and their eligible dependents? Can you also confirm that, once retired, retirees pay for the full premium?	<p>Response to Question 1: Offeror will not be responsible for handling premium contributions for active enrollees and their eligible dependents.</p> <p>Response to Question 2: Offeror will not be responsible for handling premium contributions for retirees who elect to enroll in</p>

				Cobra. If a retiree elects to enroll in the Direct-Pay Plan, the premium would be paid directly to the Offeror by the retiree.
4	6	1.3 - Overview of the Dental Plan	Is the same network applicable to both the student and non-student populations?	Please reference Section 3.3 Participating Provider Network for the requirements for the requested network.
5	7	1.4	Insurance carriers and dental plan administrators are regulated by the State of New York's Department of Financial Services, and not typically registered with the Secretary of State in most states. Therefore, will you accept a Certificate of Authority from the New York State Department of Financial Services, or is registration with Secretary of State a mandatory requirement?	Registration with the New York State, Department of State is required.
6	8	Appendix A, Section 19	Does the Department agree to define "Subcontractor" as those hired exclusively to perform services related to the State's self-funded dental services? The requirements in Section 19 would be burdensome for our book of business subcontractors who are already operating under pre-existing agreements. Lastly, can you also confirm that "Subcontractor" does not include providers in our Dental network?	Per Attachment 15, Glossary of Defined Terms, Subcontractor means "any individual or legal entity (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) who has entered into a contract, express or implied, for the performance of a portion of the Contract with a Contractor." Subcontractor does not include Provider which is defined as "a General Dentist or Specialist, who are permitted to perform covered services."
7	11	Appendix B, Section 24	24.c, Generally speaking, for our other self-funded dental customers, we limit our liability to the amount of administrative service fees paid during the previous one-year contract period. Is the Department amenable to this?	No.
8	11	Appendix B, Section 24	24.d, Can the Department provide the basis for not agreeing to indemnify the Contractor so that we may verify?	Appendix B, Section 24, is a material term of the RFP and will be incorporated into the resulting Contract.
9	11	Appendix B, Section 24	24.a, We propose adding a carve out for Program Benefits Litigation and limiting to third party claims. Is the Department amenable to this?	No, the Department is not amenable to adding a carve out to Appendix B, Section 24, for Program Benefits Litigation and limiting to third party claims.

10	12	6 – Submission of Proposal	We will be submitting three separate binders (Administrative, Technical, and Financial) and numbering pages consecutively within each binder (not across the three binders). Please confirm this is correct.	Confirmed.
11	12	General Question	Please confirm the number of copies requested as there is a discrepancy between the two documents: One original and four hard copies of each of the three sections or One original and eight hard copies of Admin and Technical & One original and two hard copies of the Financial proposal.	One original hard copy and four hard copy versions of each of the three sections of the RFP are required. In addition to a master electronic submission containing all the original hard copy sections of the proposal, the Offeror must submit sixteen additional USB drives; eight of which each contain an electronic copy of the Administrative and Technical Proposal only, and eight of which contain the Financial Proposal only.
12	13	Appendix B, Section 26	26.c, Can you clarify whether this provision applicable. What ownership / license rights are being referred to, if any?	Appendix B, Section 26.c, "Title and Ownership" is a material requirement of the solicitation. The provision applies to any Products (items or deliverables) provided by the Contractor under the resulting Contract and may include commodities, services and/or technology.
13	21	2.2	The RFP notes that Attachment 11 and the redacted copies should "not be included in the Offeror's Proposal" and, furthermore, should be submitted "to the Department at the time of its Proposal submission, but separately from its Proposal." To ensure the information is provided separately, should bidders submit a 4th box to the Department with the redactions, or is it permissible to include the redacted copies and Attachment 11 in a separately sealed box within the Administrative Proposal box delivered?	The Offeror's Requested Redactions must be submitted to the Department at the time of its Proposal submission, and may be submitted in a separately sealed box, but not included in the Offeror's Proposal.
14	22	2.2	Section 2.2 subsection b requires "an electronic copy of the Administrative Proposal, the Technical Proposal, and the Financial Proposal on a separate USB storage drive" for the marked redacted copies. However, the remainder of the instructions under Section 2.2 mention "USB storage drives" in plural form. Please clarify whether Offerors should include 3 redacted USB copies (one for each proposal) or a single USB with all redacted proposals included.	The Offeror must provide a master electronic copy of the Administrative Proposal, the Technical Proposal, and the Financial Proposal on a separate USB storage drive which reflects the Offeror's requested redactions.

15	23	Appendix B, Section 41	Is the Department willing to negotiate on the timeline for notice of a Security Incident?	Insufficient information is provided to respond to the question. The Department has a separate process for the consideration of non-material deviations. If an Offeror wishes to propose a modification to Section 41 timeline, it should provide the information as part of the justification for the non-material deviation using the Non-Material Deviations Template (Attachment 8).
16	23	Appendix B, Section 41	We interpret 'discovery or reasonable belief of a Security Incident' to be a confirmed security breach not a suspected incident. Does the Department agree with this?	Appendix B, Section 41, "Disclosure of Breach" – "discovery or reasonable belief of a Security Incident" is self-explanatory and does not require further clarification. The resulting Contractor must use its best business judgment to determine whether a Security Incident impacting the States sensitive or Confidential Information meets this threshold and notification is required.
17	28	Section 3.3	With regard to the Department's Minimum Access Standards listed and the Geo Access results bidders will submit, must a given provider be certified to offer that specialty type under their NPI number to be counted? Or, is it permissible for General Dentists and other providers that offer some specialist services to still be counted as part of the results under a given specialty?	Please reference Section 3.3.1.e of the RFP: "The Offeror must ensure that all Providers are credentialed and meet the licensing and quality standards required by the state in which they operate before they provide any Project Services." The state in which a specialist operates dictates how a provider can be classified and what services they can administer.
18	40	3.7	For requirement xviii, please clarify the intent is to allow the Offeror to be able to accept address changes from the member directly and pass those changes on to the Department. If correct, please provide the frequency and any file layout requirements available.	The Department is not requiring the Offeror to report address changes made to the Offeror to the Department via a file. This requirement has been removed in the Amended RFP.
19	41	3.8	Approximately how many bills to retirees does the current Dental plan administrator send out each month and each year?	The Direct-Pay Plan is administered and handled in its entirety by the current NYS Dental Plan administrator, so the Department does not have information on how many bills are sent out by month or year. The 2022 year ending Direct-Pay Plan enrollment number, as reported to the Department by the current Contractor, was 17,330.

20	41	3.9	Requirement iii notes that the Offeror's responsibilities include "developing and maintaining claim payment procedures." Please provide more detail on the claim funding process the State anticipates.	Per RFP Section 1.1, the Department is administering this program on a self-funded basis. Per RFP Section 6.1, the Contractor will be paid monthly for all Dental Plan claims upon receipt of an accurate invoice.
21	41	3.9 Claims Processing, a.xii	Is the requested access for the purpose of viewing historical claims in the claims system or access to a tool that can report on claims?	The requested access is for the viewing of historical and current claims for the Plan either via the Offeror's claims adjudication system or through a secure portal or tool that will provide the Department access to all of the information from the claims adjudication system for each claim.
22	43	3.9	Requirement xii on page 43 notes the Offeror must provide "direct, secure access to the Offeror's claims system through any online web-based reporting tools". Please expand on this requirement and the specific type of access desired. Is the State referring to an online group portal and not to Offerors' claims adjudication system?	The requested access is for the viewing of historical and current claims for the Plan either via the Offeror's claims adjudication system or through a secure portal or tool that will provide the Department access to all of the information from the claims adjudication system for each claim.
23	48	3.13	Section 3.13 provides an overview of the two phases that comprise the Transition Services. Please provide clarification on when Phase Two ends from the requirement that it "will remain in effect until all Open Claims have been settled to the satisfaction of the Department." Does this refer to claims incurred and received by the end date but paid after the end date, or all incurred claims regardless of the received date? If the latter, what is the timeframe to continue to receive and process claims with dates of service while active?	All Plan Claims incurred during the Contract term must be reconciled; there is no deadline for claim submission and the Contractor would be responsible for the settlement of those claims.
24	70	5.4	The RFP states "The Offeror may execute custom Dental Provider contracts contingent on award of a Contract or utilize existing agreements that can be made applicable to the Plan or a combination thereof." Please confirm, however, that the Geo Access results, and the Provider Network files submitted must be reflective of the Offeror's current network in place and not inclusive of any anticipated provider contracts not in place as of the submission deadline.	Confirmed.

25	83	6.1	Section 6.1 of the RFP states that throughout the term of the Contract, the Offeror will be paid on a monthly basis for Dental Plan claims. Is The Department willing to fund a bank account in which the contractor can draw claims payments from?	No, DCS will not fund a bank account that the Contractor can draw claims payments from.
26	88	7.3	Will member out of pocket costs be considered in the Financial Proposal Evaluation? A closed list plan can generate additional member out of pocket costs through billing for services that are not covered by the plan.	Section 6 of the RFP sets forth the requirements for the Offeror's Financial Proposal submission and the cost structure required by the Department. Evaluation of Financial Proposals will be performed in accordance with Section 7.3 of the RFP.
27	88	7.3	Will the offer's proposed Administrative Fee be included in the total cost projection that will be used for the Financial Proposal Evaluation? The Administrative Fee is not mentioned in section 7.3.	Yes. Please refer to Amended RFP Section 7.3.1.
28	35-36	3.6; Attachment 17	Pages 35-36 requires that "all financial reports including claim reports are generated from amounts billed to the Dental Plan and reconciled to amounts reported in quarterly and annual financial experience reports." In addition, Attachment 17 only notes the reporting frequency as monthly, quarterly, and annually. Please advise if the State does not anticipate needing reporting provided today at a semi-annual frequency and if Offerors should only price to the frequencies listed in the RFP.	No. The State does not anticipate reporting on a semi-annual frequency. Please refer to RFP Section 3.6 Reporting requirements.
29	85-86	7.2 Technical Proposal Evaluation – 1.a-b.	Can the Department supply offerors with examples that illustrate the differences between achieving an <i>Excellent</i> versus <i>Good</i> rating when evaluating responses to the Technical Proposal?	No.
30	86-87	7.2	For the performance guarantee scoring, please clarify if the scoring will be done in the aggregate 125% credit amount across ALL performance guarantees collectively or will the associated credit amount for each performance guarantee be scored independently.	The Performance Guarantees will be scored independently. Please reference RFP Attachment 6, Performance Guarantees.

31	86-87	7.2	<p>Page 86 advises that “A rating of “excellent” equates to a score of 4 for each evaluated service level standard.”</p> <p>Can the State confirm each performance guarantee is scored independently?</p>	Confirmed.
32	Appendix C, Page 1	1. Compliance - Contractor	Please refer to the prior comment (Variable Clauses, #1).	See response to Question 33.
33	Appendix C, Page 1	Variable Clauses, #1	<p>The contractor has reviewed these requirements and notes that the Department’s expectations are generally aligned with Contractor policy. However, Contractor respectfully submits that it is exceedingly challenging to accommodate the complete alignment of its policies to the Department’s requirements, especially when such are referenced external to the contract and are subject to change at any time in the future.</p> <p>The contractor’s policies and practices are aligned with applicable law and the generally accepted practices of the healthcare industry. Contractor services 100,000+ individual health plans for public and private organizations, and further may be in breach of agreement with its broader customer base if it must conform its enterprise practices to the New York State standards.</p> <p>Is the Department amenable to negotiating language that acknowledges the Contractor’s business challenges with these baseline controls?</p>	<p>Insufficient information is provided to respond to the question. The Department has a separate process for the consideration of non-material deviations. If an Offeror wishes to propose a modification to Appendix C, Paragraph 1, that acknowledges the Contractor’s business challenges with these baseline controls it should provide the information as part of the justification for the non-material deviation using the Non-Material Deviations Template (Attachment 8).</p>
34	Appendix C, Page 3	3.4	Please confirm that the executed BAA will prevail over conflicts with Appendix C.	RFP, Section 8.4, Use and Disclosure of Protected Health Information (Business Associate provisions) applies to Protected Health Information where Appendix C, Section 3.4, applies in general to Information Security Incidents. If the Security Incident is related to PHI, RFP, Section 8.4 will take precedence over any conflicts with Appendix C.
35	Appendix C, Page 3	4.1	Will the contractor have the opportunity to mutually agree on audit scopes in advance, to dialogue on reasonable parameters?	With regard to the scope of the audit specified in Appendix C, Page 3, Parg. 4.1 the Department shall provide advanced notice of any assessment or audit. The Parties shall mutually

				agree in writing to the timing of the assessment or audit. The Department is open to discussing reasonable concerns regarding the scope of the audit but maintains ultimate discretion in the final audit scope.
36	Appendix C, Page 3-4	4.2	<p>The contractor requests reasonable parameters in conducting such assessments, to ensure that it does not accept administratively untenable contract obligations for an individual customer.</p> <p>Please confirm that failure to complete remediation requirements will be evaluated against a materiality standard.</p>	Per Appendix C, Page 3, Sec 4.2 Contractor's failure to complete any remediation requirements within the mutually agreeable timeframe shall be deemed a material breach of the Agreement.
37	Appendix C, Page 4	4.2.1	Can the contractor request parameters around the obligation to provide report details given the highly sensitive nature of control deficiencies that may be described within the HITRUST assessment?	The Department is open to discussing reasonable concerns regarding the highly sensitive nature of control deficiencies but maintains ultimate discretion with regard to reasonably requested information by the Department to ensure the security of State systems and Data.
38	Appendix C, Page 5	4.2.4	Are the Department's interests already adequately covered by the HITRUST assessment, given the Contractor's and assessor's mutual obligation to disclose material conditions that impact Contractor's services to its customers? Further, can the Department accommodate Contractor's challenge in that it does not have the contractual right to disclose other assessment results to its customers, particularly as relating to assessments that do not cover the Contractor's services under the Agreement?	<p>Response to Question 1: No</p> <p>Response to Question 2: The Department is open to discussing reasonable concerns regarding assessment results, particularly as relating to assessments that do not cover the Contractor's services under the Agreement, but the Department maintains ultimate discretion with regard to reasonably requested information to ensure the security of State systems and Data.</p>
39	Appendix C, Page 5-6	4.2.5	Can the Contractor request a more reasonable notification time limit?	Insufficient information is provided to respond. The Department has a separate process for the consideration of non-material deviations. If an Offeror wishes to propose a modification to Appendix C, Section 4.2.5, "time limit" it should provide the information as part of the justification for the non-material deviation using the Non-Material Deviations Template (Attachment 8).
40	Appendix C, Page 7	6.8	Is this interest already captured in provision 6.9?	No, Appendix C, Section 6.9 is with regard to performing annual third-party penetration testing, not vulnerability scans (Sec 6.8).

41	Appendix C, Page 8	6.10	Is this provision applicable, given Contractor is not providing services through Department's portal, applications, or domains?	Appendix C, section 6.10 is applicable to the extent any Contractor products or services related to the Agreement are provided through a Department portal or mobile application.
42	Appendix C, Page 9	8.6	Is the Department amenable to the Contractor's administrative accommodation of this interest through logically distinguishing the Department's data using unique record identifiers, in lieu of logical segmentation/segregation of data?	No, NYS DCS cannot accommodate this request. Logical or physical segmentation or segregation of the data is required.
43	Appendix C, Pages 2-3	3.2	Will summarized artifacts associated with a contractor's WISP be satisfactory for purposes of meeting requests under 3.2? Will the Contractor have the opportunity to review and dialogue upon requested changes, as they may involve significant costs and time to implement or may already be addressed by Contractor's compensating controls?	Response to Question 1: Summarized artifacts associated with a contractor's WISP will not be satisfactory for purposes of meeting requests under 3.2. The Department is open to discussing reasonable concerns regarding highly sensitive information in the WISP but maintains ultimate discretion with regard to reasonably requested information to ensure the security of State systems and Data. Response to Question 2: Yes, but the Department maintains ultimate discretion regarding requested Changes that impact the security of State systems and Data.
44	N/A	Attachment 18	Can DCS provide a breakout of member and provider calls?	No.
45	N/A	Attachment 18	Do the call center statistics in Attachment 18 represent both provider and member call volumes?	Yes, the statistics represent both provider and member call volumes.
46	N/A	Attachment 19 & 28	Attachment 28 notes the SEHP plan and then all other groups. Please confirm all the unions and retirees outlined on Attachment 19 fall under the definition of "All Other Groups" noted on Attachment 28.	Please see the Amended Attachment 28. Confirmed.
47	N/A	Attachment 21 Columns A & B	Please provide the key to the Benefit Plan and Benefit Programs columns on Attachment 21.	Please see Attachment 19 Benefit Programs for a key to the Benefit Program codes. Benefit Plan 870 is for SEHP (GSEU) and Benefit Plans 810 and 830 are for all other Benefit Programs.

48	N/A	Attachment 23	<p>Why does Attachment 23 contain a section of the report for claims experience from a secondary or wrap network? All data in this section is 0 or \$0. Does the current dental plan administrator offer a secondary or wrap network?</p> <p>Does the current dental plan administrator have a secondary or leased network for members living outside of New York? If so, does the current contract include Careington to provide network access to members who reside outside of the State of New York?</p>	<p>Response to Question 1 and 2: The current NYS Dental Plan does not have a secondary or wrap network.</p> <p>Response to Question 3 and 4: These questions are outside of the scope of the RFP.</p>
49	N/A	Attachment 23	<p>Paid claim information in Attachment 23 was broken out by Network and Type of Service (code ranges). In order to provide an optimal network offering and comprehensive review please respond to the below:</p> <ul style="list-style-type: none"> • Could this information be provided at the Procedure Code level rather than ranges? • Please confirm that there is no network wrap or secondary network in place today as this information is currently not populated. • Please confirm that the SEHP plan participants don't have any out- of-network paid claims, but covered procedures are paid at the out-of-network reimbursement schedule. 	<p>Response to Bullet 1: No.</p> <p>Response to Bullet 2: The current NYS Dental Plan does not have a secondary or wrap network.</p> <p>Response to Bullet 3: The SEHP plan does not have any out-of-network coverage. Please reference the Amended Attachment 28 for the SEHP Benefit Summary for covered in-network services.</p>
50	N/A	Attachment 28	<p>Please provide a complete summary plan document and/or certificate of coverage for each plan noted on Attachment 28.</p>	<p>Please see the Amended Attachment 28.</p> <p>All current NYS Dental Plan Certificate(s) of Insurance and Attachments are posted on the NYS Department of Civil Service website at: https://www.cs.ny.gov/employee-benefits/login/index.cfm</p>
51	N/A	Attachment 28	<p>Are the listed CDT codes in the OON reimbursement schedule dictating all covered CDT codes both INN and OON?</p>	<p>Please see the Amended Attachment 34.</p> <p>No. The CDT codes in Attachment 34 specifically represent codes that had OON utilization in either calendar year 2021 and/or 2022 and that are also listed on the “Non-Participating Provider Reimbursement Schedule” * currently posted on the</p>

				<p>NYS Department of Civil Service website at: https://www.cs.ny.gov/employee-benefits/login/index.cfm.</p> <p>*Please note, the codes on the “Non-Participating Provider Reimbursement Schedule” represent approximately 94 percent of the Dental Plan’s total OON service units in calendar year 2021 and 2022. The incumbent will work with the successor during implementation to provide the complete OON fee schedule.</p>
52	N/A	Attachment 28	Under major restorative for the student and non-student benefit plans, implant services are indicated as not covered but the OON reimbursement schedule makes an allowance of \$600. Are implants intended to be covered or are the plan benefits reflected online potentially out-of-date?	<p>Please see the Amended Attachment 28.</p> <p>The NYS Dental Plan Certificate(s) of Insurance and Attachments have recently been updated and are now available on the NYS Department of Civil Service website at: https://www.cs.ny.gov/employee-benefits/login/index.cfm</p> <p>Currently, implants are not covered for the SEHP Plan and they are covered up to \$600 for all other benefit programs.</p>
53	N/A	Attachment 28	Please advise if the \$25 deductible mentioned in Attachment 28 applies to all groups, including NYS Public Employees Federation (PEF) members.	<p>Please see the Amended Attachment 28.</p> <p>Only PEF and Management Confidential/Participating Employers have a \$25 deductible per individual per calendar year and a combined maximum deductible of \$75 per family per calendar year for covered dental services.</p> <p>The NYS Dental Plan Certificate(s) of Insurance and Attachments have recently been updated and are now available on the NYS Department of Civil Service website at: https://www.cs.ny.gov/employee-benefits/login/index.cfm</p>
54	N/A	Attachment 30	Can an indicator be added that shows the current network status for all providers in the Utilized Provider File?	No.
55	N/A	Attachment 34	On Attachment 34, many of the CDT codes include an asterisk. Please advise of the definition that aligns with the asterisk.	Please see the Amended Attachment 34, which has asterisks removed.

56	N/A	Attachment 34	Please confirm if the CDT codes listed on Attachment 34 is inclusive of all available services covered in and out of network. If not, please provide a complete listing of CDT codes along with the out-of-network allowance.	Please see the Amended Attachment 34 and reference response to Question 51.
57	N/A	Attachment 34	Does Attachment 34 for the OON reimbursement schedule apply equally to the PEF and SEHP plans?	Please see the Amended Attachment 34. Attachment 34 is the OON Reimbursement Schedule for all groups as indicated on Attachment 19 Benefit Programs, excluding SEHP (GSEU). SEHP does not have OON benefits.
58	N/A	Attachment 34	The listed CDT codes in Attachment 34 for the OON reimbursement schedule lack more than a dozen CDT codes listed on NYSHIP Online for the PEF plan. Our assumption is the listed OON reimbursement schedules posted online are the most up to date. Can you confirm?	Confirmed. Please see the Amended Attachment 34 and the response to Question 51.
59	N/A	Attachment 34	What do the asterisks (* and **) represent?	Please see the Amended Attachment 34, which has asterisks removed.
60	N/A	Attachment 6	If there are areas where no specialty provider is available within the limited parameters, how is the guarantee calculated?	Refer to Sections 3.3.1 and 5.4 Participating Provider Network for requirements on having a comprehensive Participating Provider Network in place to allow adequate access for Dental Plan Enrollees to network providers. Per Section 5.4.2.a-c., "The Offeror's network cannot provide less than the required network Access-Urban/Suburban/Rural requirements as outlined in Section 3.3."
61	N/A	Attachment 6	Various state-based regulations require us to have a separate discount network. Therefore, in order to accommodate, please advise if the two networks utilized will have separate PGs applied based on enrollment.	No, the networks utilized will not have separate Performance Guarantees. The Performance Guarantees would be applied to the networks in aggregate.

62	N/A	Attachment 1	Would the Department consider modifying the Confidentiality Agreement to remove the requirement to list all the Authorized Persons on Attachment A. Bidder does not anticipate letting any subcontractors access the information and all its employees would be bound by the terms of the Confidentiality Agreement. To keep track of each team member that may review the information in a shared file is burdensome and will likely delay our review of the information as we set up a process and procedure to comply with this requirement.	Attachment 1 is Offeror Affirmation and Agreement, Attachment 16, is the Confidentiality and Non-Disclosure Agreement. The Department does not agree to modifying Attachment 16. Attachment 16 must be fully completed, identifying those individuals within your organization who need access and are authorized to receive confidential information provided by the State, in addition to the related security requirements. Failure to properly complete and return the entire Confidentiality and Non-Disclosure Agreement (Attachment 16), including Attachment A, Vendor Contact and Authorized Persons List, naming one or more designated individual(s) who are authorized to receive the secure data on behalf of your organizational, is not acceptable.
63	N/A	Attachment 21	Please add tier indicator on the census file as well as active/retiree status.	Tier indicator and active/retiree status cannot be added to the census file. Please reference Attachment 19 Benefit Programs to see which Benefit Program codes are linked to Retirees.
64	N/A	Attachment 30	In the file for disruption reporting (Attachment 30), can you please add the following data points for all providers listed: <ul style="list-style-type: none"> · Current in vs. out of network status; · Number of claims submitted; · Total submitted charges; and · Number of members seen. 	No.
65	N/A	Attachment 34	The Out of Network Reimbursement Schedule (ATTACHMENT 34) contains a limited number of ADA codes. If an employee submits a claim from an out of network provider, for a service (ADA code) not listed in Attachment 34, will the plan provide any reimbursement or is the member responsible for the full cost of the service?	Please see the Amended Attachment 34. If the service is covered by the NYS Dental Plan, the service would be reimbursable INN or OON as outlined in the NYS Dental Plan Certificate(s) of Insurance and Attachments available on the NYS Department of Civil Service website at: https://www.cs.ny.gov/employee-benefits/login/index.cfm Not all OON codes are listed in Attachment 34. Please see response to Question 51.

66	N/A	Attachment 16 – Confidentiality and Non-Disclosure Agreement	In continuing to review the Department’s RFP for Dental Plan Services, United Concordia identified a few items in Attachment 16 – Confidentiality and Non-Disclosure Agreement that we propose changes to. Please find our proposed modifications included in the attached document. We appreciate the Department’s consideration of our proposed changes.	The Department does not agree to modifying Attachment 16 Confidentiality and Non-Disclosure Agreement.
67	Dental Plan Certificate of Insurance	N/A	Repair of Appliances (page 14): Is there a separate annual maximum for these services or do these accumulate to the base plan annual maximum?	There is not a separate maximum for Repair of Prosthetic Appliances referenced on Page 22 of the NYS Dental Plan Certificate of Insurance. These services accumulate to the annual maximum as described on Page 14 of the Certificate of Insurance.
68	N/A	Disruption Report	The provider disruption report had two separate tabs, one for SEHP and one for All others. Would you like the disruption report to be listed on 1 report or 2 reports?	There should be 2 separate provider disruption reports, one for SEHP and one for All Other Groups.
69	N/A	N/A	Does the current contract have a shared saving arrangement or is network access fee incurred?	This question is outside of the scope of the RFP.
70	N/A	N/A	Have there been any significant improvements to the current plan administrators’ dental network over the past 2-3 years? The RFP requests that Offerors propose their broadest network. Are there any specific gaps in network access/adequacy that you are hoping to solve for?	Response to Question 1: This question is outside the scope of this RFP. Response to Question 2: Offerors are required to meet the network requirements as outlined in Section 3.3 Participating Provider Network and offer Plan enrollees the broadest network access possible.
71	N/A	N/A	In addition to the plan challenges effective 1/1/22, have there been any other plan changes over the last 3 years? If so, please explain.	Information regarding historical plan changes is not readily available. The NYS Dental Plan is subject to program changes as a result of collective bargaining between the State and the various unions electing to participate in the Dental Plan.
72	N/A	N/A	In PEF’s dental plan certificate, bedside calls are listed as a covered Type B – Basic service. Can you please share the CDT code(s) that is billed for this service? Additionally, can you please share addition information on this service based on its description such as what is consider a “bedside call” and an “emergency”?	Response to Question 1: No. Response to Question 2: This question is outside of the scope of the RFP.

73	N/A	N/A	Please provide current rates, and rate history (i.e., 2020-2023).	This question is outside of the scope of the RFP.
74	N/A	N/A	Please provide the last 37 months of premium, claims, EOBs, and covered lives by month.	Please see Attachment 23 Dental Service Counts and Net Payment for paid claims data for calendar year 2022 and reference Attachment 24 Enrollment by Month for covered enrollees by month from 2018 to 2023. The additional requested information is outside of the scope of the RFP.
75	N/A	N/A	We can see through publicly available information that PEF members have Emblem Health's Preferred Premier Network. Do all other participating entities and unions have the same network? If not, can you please provide the names of the other networks?	Response to Question 1 and 2: These questions are outside of the scope of the RFP.
76	N/A	N/A	We have located PEF's most current plan certificate online. If the plan certificates for other unions and participating entities are different, can you please provide a copy of those certificates?	The NYS Dental Plan Certificate(s) of Insurance and Attachments have recently been updated and are now available on the NYS Department of Civil Service website at: https://www.cs.ny.gov/employee-benefits/login/index.cfm
77	N/A	N/A	What is the current in network utilization rate for 2022, and year to date 2023 (if available)? Please provide 2 years of history for the in-network utilization (2020-2021).	These questions are outside of the scope of the RFP.
78	N/A	N/A	Would The Department consider contracting with a second plan administrator, and allowing employees to "buy up" and to make a premium contribution if they would prefer a plan with a broader network? Would the Department consider a fully insured quote for the buy up plan option?	No.
79	N/A	General Question	Does the current OON Medical referral program for the Empire Plan also apply to the Dental plan?	No.
80	N/A	General Question	Does the OON provider remain outside of the network access guarantee if granted an OON referral?	The OON provider would remain outside of the network access guarantee if granted an OON referral.

81	N/A	General Question	Are alternate benefit provisions permitted in-network wherein members will pay the difference above the allowed participating provider reimbursement amount? For example, can the carrier default to pay the least expensive procedure available than the one requested and, if the initial procedure is still desired, the member can then pay the cost difference to the participating provider?	Response to Question 1: No. Response to Question 2: No.
82	N/A	General Question	Please advise on any requirements expected of the Offeror when a member visits an out-of-network provider, including any negotiation or recruitment activities expected.	Please reference Section 3.3, specifically Section 3.3.1.d. for requirements expected of the Offeror when a member visits an out-of-network provider.
83	N/A	General Question	Since the RFP is seeking dental services only, please confirm that offers for other additional ancillary coverage or package bundles are not permitted and, furthermore, have no bearing or weight in the scoring of Offerors' proposals.	Confirmed.
84	N/A	General Question	Have there been any plan design changes in the last 5 years. If so, please explain.	The information regarding historical plan changes is not readily available. The NYS Dental Plan is subject to program changes as a result of collective bargaining between the State and the various unions electing to participate in the Dental Plan.
85	N/A	General Question	Please provide your current fees/rates.	This question is outside of the scope of the RFP.
86	N/A	General Question	When do the Collective Bargaining agreements expire?	Refer to the Office of Employee Relations website for specific Bargaining Agreements and associated terms: https://oer.ny.gov/state-union-contracts

ATTACHMENT 3



Department of
Civil Service

"Contract Fees"
Dental Plan Services
Contract C000755

	Fee	Basis
Monthly Administrative Fee (1)	<div></div>	<div></div>

(1) The Contractor's Fee will be for the duration of the Contract as set forth in Section 7.3.1 of the Contract.

ATTACHMENT 3



Department of
Civil Service

"Contract Fees"
Dental Plan Services
Contract C000755

Dental Plan's Out-of-Network Reimbursement Schedule

Code	Description	Maximum Reimbursement
D0120	Periodic examination	██████
D0140	Limited oral evaluation, problem focused	██████
D0150	Comprehensive oral evaluation	██████
D0210	Intraoral complete series (includes bitewings)	██████
D0220	Intra-oral periapical (standard x-ray films): Initial periapical x-ray	██████
D0230	Each additional film	██████
D0270	Initial Bitewing	██████
D0272	Bitewings-two films	██████
D0274	Bitewings-four films	██████
D0330	Panoramic (panography)	██████
D1110	Adult	██████
D1120	Children under 12 years of age	██████
D1208	Topical Application of Fluoride	██████
D1351	Sealant per tooth	██████
D1510	Fixed, unilateral band type	██████
D1515	Fixed, lingual or palatal arch band type	██████
D1520	Space maintainer, removable, acrylic	██████
D2140	Amalgam—One surface, permanent	██████
D2150	Amalgam—Two surfaces, permanent	██████
D2160	Amalgam—Three surfaces, permanent	██████
D2161	Amalgam—Four or more surfaces, permanent	██████
D2330	Resin—one surface, anterior	██████
D2331	Resin—two surfaces, anterior	██████
D2332	Resin—three surfaces, anterior	██████
D2335	Resin—four or more surfaces, anterior	██████
D2391	Resin-based composite-1 surf posterior	██████
D2392	Resin-based composite-2 surf posterior	██████
D2393	Resin-based composite-3 surf posterior	██████
D2751	Crown—Porcelain fused to predominately base metal	██████
D2791	Crown—Full cast, predominately base metal	██████
D2920	Recement crown	██████
D2952	Cast post and core in addition to crown	██████
D2954	Prefabricated post and core in addition to crown	██████
D2960	Labial veneer (lamine, chairside)	██████



Department of
Civil Service

"Contract Fees"
Dental Plan Services
Contract C000755

Code	Description	Maximum Reimbursement
D2962	Labial veneer (porcelain laminate, lab processed)	██████
D3220	Therapeutic pulpotomy	██████
D3310	Root canal therapy—anterior	██████
D3320	Root canal therapy—bicuspid	██████
D3330	Root canal therapy—molar	██████
D3410	Apicoectomy, single procedure	██████
D3426	Apicoectomy, each additional root	██████
D3920	Hemisection	██████
D4210	Gingivectomy or gingivoplasty 4 or more contiguous teeth or tooth-bounded spaces per quadrant	██████
D4211	Gingivectomy or gingivoplasty 1-3 contiguous teeth or toothbounded spaces per quadrant \$45.00	██████
D4260	Osseous surgery (per quadrant); at least 5 teeth per quadrant	██████
D4266	Guided tissue regeneration	██████
D4341	Periodontal scaling and root planning (per quadrant); at least 5 teeth per quadrant	██████
D4910	Periodontal Prophy, max 2 treatments each per calendar year (starting 1/1/15) Periodontal prophy counted toward the 5 treatments per calendar year	██████
D5110	Complete dentures: Full permanent, upper jaw	██████
D5120	Complete dentures: Full permanent, lower jaw \$580.00	██████
D5211	Upper partial denture—resin base (including any conventional clasps, rests and teeth)	██████
D5212	Lower partial denture—resin base (including any conventional clasps, rests and teeth)	██████
D5213	Upper partial denture—cast metal framework with resin denture bases	██████
D5214	Lower partial denture—cast metal framework with resin denture bases	██████
D5281	Removable unilateral partial denture with one piece cast metal	██████
D5520	Replacing missing or broken teeth, complete denture, each tooth	██████
D5630	Replacing broken clasp	██████
D5650	Adding teeth to partial denture to replace natural teeth	██████
D5711	Rebase full, lower jaw (lab processed)	██████
D5730	Reline complete upper denture (chairside)	██████
D5731	Reline complete lower denture (chairside)	██████



**Department of
Civil Service**

**"Contract Fees"
Dental Plan Services
Contract C000755**

Code	Description	Maximum Reimbursement
D5740	Reline upper partial denture (chairside)	██████
D6010	Surgical placement of implant body: endosteal implant	██████
D6241	Pontic—porcelain fused to predominately base metal	██████
D6604	Inlay—cast predominantly base metal, 2 surfaces	██████
D6751	Crown—porcelain fused to predominantly base metal	██████
D6930	Recementing fixed bridge	██████
D7111	Routine removal of tooth or retained root	██████
D7140	Extraction, erupted tooth or exposed root (elevation and/or forceps removal)	██████
D7210	Surgical removal of erupted tooth requiring elevation of mucoperiosteal flap & removal of bone and/or section of tooth	██████
D7230	Partial bony impaction	██████
D7240	Removal of impacted tooth completely covered by bone	██████
D7285	Biopsy and examination of oral tissue	██████
D7450	Cyst removal	██████
D7510	Incision and drainage of periodontal abscess	██████
D8670	Active orthodontic treatment up to 20 months each treatment	██████
D8680	Passive treatment up to a lifetime maximum of	██████
D9110	Palliative (Emergency)	██████
D9222	Deep Sedation/General Anesthesia- First 15 Minutes	██████
D9223	Deep Sedation/General Anesthesia -Each Subsequent 15-Minute Increment	██████
D9239	Intravenous Moderate (Conscious) Sedation/Analgesia – First 15 Minutes	██████
D9243	Intravenous Moderate (Conscious) Sedation/Analgesia – Each Subsequent 15-Minute Increment	██████
D9310	Consultation with dental specialist	██████
D9941	An athletic mouth guard	██████

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, if this contract exceeds \$50,000 (or \$75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and \$150,000 for State University Health Care Facilities) 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 \$25,000, 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, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. Comptroller’s approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

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, nor subject any individual to harassment, because of age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. 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 (2 NYCRR § 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 Part 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 clause. 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 and Technology Development
625 Broadway
Albany, New York 12245
Telephone: 518-292-5100

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 33rd Floor
New York, NY 10017
646-846-7364
email: mwbebusinessdev@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) 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, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law §§ 899-aa and 899-bb and State Technology Law § 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 §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 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 § 5-a, if the contractor fails to make the certification required by Tax Law § 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: <https://ogs.ny.gov/iran-divestment-act-2012>

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.

27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

**New York State Department of Civil Service
April 2022**

APPENDIX B - STANDARD CLAUSES FOR ALL DEPARTMENT CONTRACTS

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1. Headings and Captions

The headings or captions contained within the Contract 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 Contract or any provisions thereof.

2. Compliance with Laws

Contractor warrants and represents that, throughout the term of the Contract, in the performance of its obligations under the Contract, it will: (i) comply with all applicable State and Federal laws, ordinances, rules and regulations and policies of any governmental entity; (ii) pay, at its sole expense, all applicable permits, licenses, tariffs, tolls and fees; and (iii) give all notices required by any laws, ordinances, rules, and regulations of any governmental entity.

3. Jurisdiction or Venue

Any action, suit or proceeding to enforce any provision of, or based on any matter arising out of or in connection with this Contract shall be brought in any New York state court located in Albany County or any federal court located in the Northern District of the State of New York.

4. Summary of Policy and Prohibitions on Procurement Lobbying

State Finance Law §§139-j and 139-k impose certain restrictions on communications between the Department and Offerors during the procurement process. Offerors are restricted from making contact, from the earliest posting, on the Department's website, in a newspaper of general circulation, or in the procurement opportunities newsletter in accordance with Article four-C of the Economic Development Law, of written notice, advertisement or solicitation of a Request for Proposal, invitation for bids, or solicitation of proposals, or any other method provided for by law or regulation to solicit offers/bids through final award and approval of the procurement contract by the Department and, if applicable, the Office of the State Comptroller ("restricted period"), to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). A finding of non-responsibility can result in rejection for contract award and in the event of two findings within a four-year period, the Offeror shall be debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the OGS website: <https://ogs.ny.gov/acpl>.

5. Notice of Substantial Change in Contractor Status

In addition to the requirements of New York State Finance Law §138 (requiring the State's approval of subcontractors and assignments and/or conveyances), the Contractor shall notify the Department of any substantial change in the ownership or financial viability of the Contractor, its Affiliates, subsidiaries or divisions, or partners, in writing immediately upon occurrence. "Substantial change" means: (i) sales, acquisitions, mergers or takeovers of the Contractor, its Affiliates, subsidiaries, divisions, or partners that result in a change in the controlling ownership or assets of such entity after the submission of the Bid or execution of Contract; (ii) entry of an order for relief under Title 11 of the United States Code; (iii) the making of a general assignment for the benefit of creditors; (iv) the appointment of a receiver of Contractor's business or property or that of its Affiliates, subsidiaries or divisions, or partners; or action by Contractor, its Affiliates, subsidiaries or divisions, or partners under any State insolvency or similar law for the purposes of its bankruptcy, reorganization, or liquidation; or (v) court ordered liquidation of Contractor, its Affiliates, subsidiaries or divisions, or partners.

Upon the Department's receipt of such notice, the Department shall have thirty (30) business days from the date of notice to review the information. The Contractor may not transfer the Contract to or among Affiliates, subsidiaries or divisions, or partners, or to any other person or entity, without the express written consent of the Department. In addition to any other remedies available at law or equity, the Department shall have the right to terminate the Contract, in whole or in part, for cause, if it finds, in its sole judgment, that such substantial change adversely affects the delivery of Services or is otherwise not in the best interests of the State.

6. Notice of Circumstances Expected to Adversely Affect Contractor's Performance

The Contractor shall immediately notify Department upon learning of any situation that can reasonably be expected to adversely affect the delivery of Project Services under the Contract. If such notification is verbal, the Contractor shall follow such initial verbal notice with a written notice to Department within three (3) calendar days of Contractor's becoming aware of the situation. The written notification shall include a description of the situation and a recommendation of a resolution.

7. Severability

In the event that one or more of the provisions of the Contract shall for any reason be declared unenforceable by a court of competent jurisdiction under the laws or regulations in force, such provision(s) shall have no effect on the validity of the

remainder of the Contract, which shall then be construed as if such unenforceable provision(s) was never contained in the Contract.

8. Waiver of Breach

No term or provision of the Contract 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 Contract shall constitute consent to, a waiver of, or excuse for any other, different or subsequent breach. The rights, duties and remedies set forth in the Contract shall be in addition to, and not in limitation of, rights and obligations otherwise available at law or equity. No delay or omission to exercise any right, power or remedy accruing to either party upon breach or default by the other under this Contract shall impair any such right, power or remedy.

9. Force Majeure

Neither Party to the Contract shall be liable or deemed to be in default for any delay or failure in performance under the Contract 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 Contract, or any other causes not reasonably foreseeable or beyond the control of a Party. Each Party is required to use best efforts to eliminate or minimize the effect of such events during performance of the Contract and to resume performance of the Contract upon termination or cessation of such events.

10. Modification of Contract

The Contract may be amended only by mutual written consent of the Parties and approved by the New York State Attorney General and Office of the State Comptroller, if required.

11. Change Request

At any time during the term of this Contract, the Department may make changes, subtractions or additions in any of the equipment, software, documentation, Project Services and/or other Deliverables within the general scope of work set forth in the Contract, consistent with pricing established under the terms of the Contract. All such changes shall be made using a mutually agreed upon form executed by the Parties and shall otherwise be in accordance with the terms and conditions of the Contract. If any such change causes an increase or decrease in pricing or the time required for the

performance of the Contract, an equitable adjustment of the Contract amount and/or time of performance will be made on mutual agreement of the Parties, subject to the approval of the New York State Office of the State Comptroller and any applicable control agency, if required.

12. Piggybacking

Contractor acknowledges and agrees that, pursuant to State Finance Law § 163(10)(e), the New York State Office of General Services may authorize and approve purchases from contracts between Contractor and Department to other New York State agencies, authorities, the United States Government or any other state, with the concurrence of the Office of the State Comptroller and under appropriate circumstances.

13. No Third-Party Beneficiaries

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

14. Work Outside of Scope of the Contract

The Contractor must not perform work outside the scope of the Contract unless such work is authorized by a properly executed written amendment to the Contract, and if applicable, approved by the Office of the State Comptroller. Work not so authorized shall not be compensated.

15. Contract Payments

Payments for commodities received or Services rendered shall be in accordance with the Contract. The State's payment obligations shall be governed by the provisions of the New York State Finance Law ("SFL") Article 11-A.

16. Liability for Taxes

- a) The Department represents that the purchases on behalf of the State of New York are not subject to any state or local sales or use taxes, or to federal excise taxes.
- b) Contractor remains liable and solely responsible without exemption for social security, unemployment insurance, workers' compensation and other taxes and obligations to which Contractor may be subject to by law.

17. State's Authority to Conduct Financial and Performance Audits

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 Project Services and any applicable State and federal statutory and regulatory authorities. The audit activity may include, but is not 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 Contract, and the review of any and all activities relating to the Contractor's performance and administration of the Contract.

In addition to any requirements set forth in the Contract, the Contractor shall make available any documentation necessary to perform such reviews including the copying of the documentation. 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 Contract, Standards Clauses for All New York State Contracts, or any audit requirements related to the security of the Contractor's systems.

Further, upon request by the State, the Contractor shall cooperate with the State, including the Office of the State Comptroller, in any investigation, audit, or other inquiry related to the Solicitation or the resulting Contract or any related litigation, at no cost to the State. This provision shall survive the termination of the Contract.

18. Independent Contractor

The Parties agree that the Contractor is an independent contractor, and the Contractor, its officers, employees, agents, consultants, contractors and/or subcontractors in the performance of the Contract shall act in an independent capacity and not as agents, officers or employees of the State or the Department. Neither the Contractor nor any subcontractor shall thereby be deemed an agent, officer, or employee of the State. The Contractor agrees, during the term of the Contract, 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 workers' 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 Federal Insurance Contributions Act payments.

19. Subcontracting

If allowed in the solicitation, the Contractor may arrange for specified portions of its responsibilities to be subcontracted. The Contractor shall not in any way be relieved of any responsibility under the Contract by any subcontract. The Contractor shall be solely responsible to the Department for the acts or defaults of its Subcontractor(s) and of such Subcontractors' officers, agents, and employees, each of whom shall for this purpose, be deemed to be the agent or employee of the Contractor to the extent of its subcontract. Any Deliverable provided or furnished by a Subcontractor shall be deemed for purposes of the Contract to be provided or furnished by the Contractor.

The Contractor shall inform each Subcontractor fully and completely of all provisions and requirements established by the Contract and enter into a written subcontract. Such subcontract shall include the functional equivalent of the Contract, and include such clauses:

- That the work performed by the Subcontractor must be in accordance with the terms and conditions of this Contract.
- That nothing contained in such subcontract shall impair the rights of the Department or the State.
- That nothing contained in the subcontract shall create any contractual relationship between the Subcontractor and the Department or the State.
- That the State and Department shall have the same authority to audit the records of all Subcontractors as it does those of the Contractor.
- That Subcontractor shall cooperate with any investigation, audit, litigation or other inquiry related to the Solicitation or the resulting Contract.
- That Subcontractor shall maintain and protect against any unauthorized disclosure of records with respect to work performed under the subcontract in the same manner as required of the Contractor
- The Contractor shall require that the Subcontractor must pass through all terms and conditions of the Contract, including but not limited to Appendix A, to any lower tier subcontractors.
- Unless waived by the Department, each subcontract 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 Subcontractor, as well as any amendments to said subcontract(s). This right shall not make the Department or the State a party to any subcontract or create any right, claim, or interest in the Subcontractor or proposed Subcontractor against the Department.

The Department reserves the right, at any time during the term of the Contract, to verify that the written subcontract between the Contractor and Subcontractor(s) is in compliance with all of the provisions of this Contract. In addition to other remedies

allowed by law, the Department reserves the right to terminate the Contract for cause if an executed subcontract does not contain all of the required provisions.

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 Subcontractor or which may affect the performance of the Contractor's duties under the Contract. Failure to disclose the identity of any and all Subcontractor(s) used by the Contractor as required hereunder may, at the sole discretion of the Department, result in a disqualification of the Subcontractor, if not immediately cured, or may result in termination of the Contract for cause. The Contractor shall pay all Subcontractors for and on account of Project Services and/or Deliverables provided by such Subcontractors in accordance with the terms of their respective subcontracts. If and when required by the Department, the Contractor shall submit satisfactory evidence that it has made such payment. The Contractor shall, within five (5) Business Days of the Department's written request, file promptly with the Department a copy of any subcontract providing Services for the Contract.

20. Contractor Staff

All Contractor Staff performing work under the Contract must: meet or exceed the technical and training qualifications set forth in the Contract; comply with all security and administrative requirements of the Department; possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the work will be provided or performed; and be legally entitled to work in such jurisdiction. All persons, corporations, or other legal entities that perform Project Services under the Contract on behalf of Contractor shall, in performing the Project Services, comply with all applicable Federal and State laws concerning employment in the United States. Contractor Staff may be required to execute a Department Nondisclosure Agreement, either before or upon arrival for work at a State facility or, if in Department's sole discretion, the Contractor's Staff will otherwise have access to critical State Networks, equipment or data.

The Department, in its sole discretion, may require the Contractor to remove from interaction with the State, or may refuse access to State systems and facilities or require removal from any State facility any Contractor Staff performing work under this Contract that the Department determines poses a security risk, has a work performance that the Department finds inadequate or unacceptable, or otherwise fails to meet the Department's business requirements or expectations. The Contractor shall not assign such removed person to any aspect of the Contract without the State's written consent. Such action by the Department shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms.

For reasons of safety and public policy, the use of illegal drugs and/or alcoholic beverages by the Contractor Staff shall not be permitted while performing any phase of Contract work.

The State shall not be liable for any expense incurred by the Contractor Staff for any parking or towing fees or as a consequence of any traffic infraction or parking violations attributable to Contractor Staff.

21. Onboarding and Suitability Determinations

The Contractor, including all Contractor Staff who work on the Contract, must comply with all State and Federal onboarding and security clearance requirements, at its own expense.

Contractor is responsible, at its own expense, for making suitability determinations on its Contractor Staff prior to the staff member performing any work in connection with this Contract. For purposes of this provision, a "suitability determination" is a determination that there are reasonable grounds to believe that an individual will likely be able to perform the Contract requirements without undue risk to the interests of the State. Upon request of the State, the Contractor shall certify to the State that the suitability determinations required by this provision have been completed for all Contractor Staff performing work in connection with this Contract.

Failure of a security clearance or non-compliance with this provision will disqualify any Contractor Staff from performing any Services under the Contract. All expenses, including travel and lodging, associated with the onboarding and security clearance process, including fingerprinting of Contractor Staff, if required, are the responsibility of the Contractor and are not reimbursable.

If Contractor Staff have any lapse in work under the Contract, such individuals may be subject to all onboarding and security clearance requirements if they are returned to performing Project Services under the Contract.

The State also reserves the right to: (a) conduct a background check or otherwise approve any Contractor Staff performing work on this Contract or having access to Data; and (b) refuse access to, eject or require replacement of any personnel at the Department's discretion for any reason.

22. Separation of Duties

The Department requires the Contractor to follow security best practices by adhering to separation of job duties and limiting Contractor Staff access to Data to the minimum necessary to accomplish the intended purpose (i.e., job duties).

23. Dispute Resolution

Unless otherwise agreed to in writing by the Parties, any dispute raised by the Contractor concerning any question of fact or law arising under the Contract which is not disposed of by mutual agreement of the Parties shall be decided initially by the designee of the Commissioner ("Commissioner"). A copy of the written decision shall be furnished to the Contractor. The Parties shall proceed diligently with the performance of the Contract 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 Commissioner shall be final and conclusive unless, within ten (10) Days from the receipt of such decision, the Contractor furnishes the Commissioner a written appeal. In the event of an appeal, the Commissioner shall promptly review the initial decision, and confirm, annul, or modify it. The decision of the Commissioner 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 ("Article 78"). Pending final decision of any Article 78 proceeding, the Parties shall diligently perform the Contract in accordance with the Commissioner's decision.

24. Indemnification and Limitation of Liability

a. Indemnification:

Contractor shall be fully liable for the actions of its agents, officers, employees, partners, or subcontractors, and shall fully indemnify and save harmless the State, without limitation, from suits, actions, damages, and costs of every name and description relating to personal injury and damage to real or personal property caused by Contractor, its agents, officers, employees, partners, or subcontractors, if any, without limitation; provided however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the negligent act or negligent failure to act of the State.

Contractor shall indemnify, defend and hold the State harmless, without limitation, from any loss or damage to the State resulting from suits, actions, damages, and costs of every name and description resulting from any criminal acts committed by Contractor's officers, agents, employees, and subcontractors while providing Project Services under the Contract.

b. Indemnification for Intellectual Property Infringement:

Contractor shall indemnify, defend, and hold the State harmless, without limitation, from and against any and all damages, expenses (including reasonable attorneys' fees and legal fees), claims, judgments, liabilities, and costs which may be assessed against the State in any action for infringement of a United States Letter Patent, or of any copyright,

trademark, trade secret, or other third-party proprietary right in relation to the Services, products, documentation or Deliverables furnished or utilized by Contractor under this Contract, provided that the State shall give Contractor: (i) prompt written notice of any action, claim, or threat of infringement suit, or other suit; (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense; and (iii) assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the State may require Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the State shall require. This paragraph shall not apply to that portion of any infringement claim which results from a material modification by the State, without Contractor's approval, of any products, documentation or Deliverables furnished or utilized by Contractor pursuant to this Contract. Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, when it determines that there is an issue involving a significant public interest.

c. Limitation of Liability

For all other claims against the Contractor where liability is not otherwise set forth in the Contract as being "without limitation" or not subject to the limitation of liability provisions, and regardless of the basis on which the claim is made, Contractor's liability under the Contract for direct damages shall be limited to the greater of the following: (i) \$500,000 (Five Hundred Thousand Dollars); or (ii) two (2) times the amounts paid to the Contractor for Project Services under the Contract during the twelve (12) months of the Contract term which precedes the giving of notice of the claim by the State. For this purpose, amounts paid shall include, but not be limited to, payments made electronically, by check, by offset, or by the application of credits from the Contractor to the State. Unless otherwise specifically enumerated herein, neither party shall be liable for any incidental, punitive, consequential, indirect or special damages of any kind which may result directly or indirectly from the performance of this Contract, including, without limitation, damages resulting from loss of use or loss of profit by the State, the Contractor, or by others, however caused and regardless of the theory of liability even if such party has been informed of the possibility of such damages.

d. No Indemnification by the State:

The State does not agree to any indemnification provisions that requires the State to indemnify or save harmless Contractor or third parties.

25. Insurance Requirements

Prior to the commencement of work, Contractor shall file with the Department Certificates of Insurance evidencing compliance with all the requirements contained in the Solicitation. Acceptance and/or approval by the Department does not and shall not be construed to relieve Contractor of any obligations, responsibilities or liabilities under the Contract.

Contractor shall cause all required insurance to be in full force and effect as of the commencement date of the Contract and to remain in full force and effect throughout the term of the Contract and as required by the Contract. Contractor shall not take any action or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.

26. Warranties and Guarantees

- a. **Contract Deliverables:** Contractor warrants and represents that the Services required by the solicitation and the Contract shall be performed or provided in accordance with all the terms and conditions, covenants, statements, and representations contained in the Contract. Contractor's failure to meet pre-defined service levels or service level guarantees may result in a credit or chargeback in an amount pre-determined by the Parties.
- b. **Product Performance:** Contractor hereby warrants and represents that Products acquired by the State under this Contract conform to the manufacturer's specifications, performance standards and documentation and that the documentation fully describes the proper procedure for using the Products.
- c. **Title and Ownership:** Contractor warrants and represents that it has: (i) full ownership, clear title free of all liens; or (ii) the right to transfer or deliver specified license rights to any Products acquired by the State under the Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor shall indemnify the State and hold the State harmless from any damages and liabilities (including reasonable attorneys' fees and costs) arising from any breach of Contractor's warranties as set forth herein.
- d. **Workmanship Warranty:** Contractor warrants and represents that all Services and Deliverables shall meet the completion criteria set forth in the Contract, and that Services will be provided in a professional and workmanlike manner in accordance with the highest applicable industry standards.
- e. **Personnel Eligible for Employment:** Contractor warrants and represents that all personnel performing Services under this Contract are qualified to provide Services and eligible for employment in the United States and shall remain so throughout the term of the Contract. Contractor shall provide such proof of compliance as is required by Department.
- f. **Virus Warranty:** The Contractor represents and warrants that any Product acquired by the Department does not contain any known viruses. Contractor is not responsible for viruses introduced at the Department's site by third parties who are not Contractor Staff.

- g. **Date/Time Warranty:** Contractor warrants that Product furnished pursuant to this Contract shall, when used in accordance with the product documentation, 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 must perform as a package or system, this warranty shall apply to the Products as a system.

Where 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), Contractor warrants that Services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of 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. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such Services.
- h. **Additional Warranties:** Where Contractor generally offers additional or more advantageous warranties than those set forth herein, Contractor shall offer or pass through any such warranties to the State.
- i. **No Limitation of Rights:** The rights and remedies of the State provided in this clause are in addition to and do not limit any rights afforded to the State by any other clause of the Contract.
- j. **Survival of Warranties:** All warranties contained in the Contract shall survive termination of the Contract.
- k. **No Implied Warranties:** To the extent permitted by law, these warranties are exclusive and there are no other express or implied warranties or conditions, including warranties or conditions of merchantability and fitness for a particular purpose.

27. Ownership of and Title to Contract Deliverables

a. Contractor acknowledges that it is commissioned by the State to perform the Project Services detailed in the Contract which may include the development of intellectual property by Contractor, its Subcontractors, partners, employees or agents for the State ("Custom Products"). Unless otherwise specified in writing in the Contract, upon the creation of such Custom Products, Contractor hereby conveys, assigns and transfers to the State the sole and exclusive rights, title and interest in the Custom Products, whether preliminary, final or otherwise, including all trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through 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 in performing Services under the Contract in the course of Contractor's business. The State 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 taking exclusive ownership and title to such Products. In such case, the State 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 in the Contract.

b. Ownership of and Title to Existing Software

Title and ownership to existing software delivered by Contractor under the Contract that is normally commercially distributed by the Contractor or a third-party proprietary owner, whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products shall remain with Contractor or the third party. Effective upon acceptance, such existing software shall be licensed to the State and must, at a minimum, grant the State a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless Contractor advises the State as part of Contractor's proposal that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the State's satisfaction) and distribute existing software to the State up to the license capacity stated in the Contract with all license rights necessary to fully effect the general business purposes stated in the Solicitation. With regards to third party software, the Contractor shall be responsible for obtaining these rights at its sole cost and expense.

28. Confidentiality and Non-Disclosure

a. Confidentiality

Except as may be required by applicable law or a court of competent jurisdiction, the Contractor, its officers, agents, employees, and subcontractors, if any, shall maintain strict confidence with respect to any "Confidential Information" to which the Contractor, its officers, agents, employees, and subcontractors, if any, have access. This

requirement shall survive termination of the Contract. Contractor agrees that all officers, agents, employees and subcontractors, if any, shall be made aware of and shall agree to the terms of this Contract. Upon the request of the State or Department, all of Contractor's officers, agents, employees and subcontractors with access to Data shall cooperate in executing a written confidentiality/nondisclosure agreement and/or security addendum under applicable confidentiality and privacy laws, rules, and regulations or policies. If the State or Department does not request the execution of a written confidentiality/nondisclosure agreement and/or security addendum then Contractor shall ensure all officers, agents, employees and subcontractors with access to Data are bound by a confidentiality/nondisclosure agreement and/or security addendum requirements consistent with applicable confidentiality and privacy laws, rules and regulations or policies.

For purposes of the Contract, all data from the State of which Contractor, its officers, agents, employees, and subcontractors, if any, becomes aware during the Contract performance shall be deemed to be Confidential Information (whether oral, visual or written). Notwithstanding the foregoing, data that falls into any of the following categories shall not be considered Confidential Information:

- i. information that is previously rightfully known to the receiving party without restriction on disclosure;
- ii. 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
- iii. information that is independently developed by Contractor without use of Confidential Information of the State.

In the event that it is necessary for Contractor to receive Confidential Information, which Federal or State statute or regulation prohibits from disclosure, Contractor hereby agrees it shall not retain a copy of such Confidential Information and shall either return or destroy, in accordance with the provisions of this Contract, all such Confidential Information when the purpose that necessitated its receipt by Contractor has been completed.

Notwithstanding the foregoing, if the return or destruction of the Confidential Information is not feasible, Contractor agrees to extend the contractual protections for as long as necessary to protect the Confidential Information and to limit any further use or disclosure of that Confidential Information.

Contractor agrees that it shall use all appropriate safeguards to prevent any unauthorized use or unauthorized disclosure of Confidential Information, which Federal or State statute or regulation prohibits from disclosure.

Contractor agrees that it shall immediately report to the Department the discovery of any unauthorized use or unauthorized disclosure of such Confidential Information in accordance with the Contract notification provisions. The Parties agree that a violation of this section shall be deemed a material breach of contract.

b. Non-disclosure: Except as otherwise required by law, Contractor shall not disclose Data to a third party. Except where expressly prohibited by law, Contractor shall promptly notify the Department of any subpoena, warrant, judicial, administrative or arbitral order of an executive or administrative agency or other governmental authority of competent jurisdiction (a "Demand") that it receives and which relates to or requires production of the information or data Contractor is processing or storing on the State's behalf where the State is the object of the underlying subpoena, warrant, judicial, administrative or arbitral order. If Contractor is required to produce information or data in response to such Demand, Contractor will provide the Department with the information or data in its possession that it plans to produce in response to the Demand prior to production of such information or data. Except as otherwise required by law, Contractor shall provide the Department with reasonable time to assert its rights with respect to the withholding of such information or Data from production. If the State is required to produce information or data in response to a Demand, Contractor will, at the State's request and unless expressly prohibited by law, produce to the State any information or data in its possession that may be responsive to the Demand and shall provide assistance as is reasonably required for the State to respond to the Demand in a timely manner. The State acknowledges that Contractor has no responsibility to interact directly with the entity making the Demand. The Parties agree that the State's execution of this Contract, does not constitute consent to the release or production of Data or information.

Contractor agrees that access to and use of sensitive and Confidential Information is limited to authorized employees and legally designated agents, for authorized purposes only.

To the extent that Contractor, or Contractor Staff have access to Federal, State or local government Regulated Data pursuant to their responsibilities under the Contract, Contractor agrees that it will abide by the requirements of those Federal and State laws and regulations.

29. Freedom of Information Law

Disclosure of information related to this solicitation and the resulting Contract shall be permitted consistent with New York State laws, specifically the Freedom of Information Law (FOIL). The Department shall take reasonable steps to protect from public disclosure any records or portions thereof relating to this solicitation that are exempt from disclosure under FOIL. Information constituting trade secrets or critical infrastructure information for purposes of FOIL must be clearly marked and identified as

such by the Contractor upon submission in accordance with the solicitation provisions. If the Contractor intends to request an exemption from disclosure under FOIL, the Contractor shall at the time of submission, request the exemption in writing and provide an explanation of why the information should be exempted from disclosure pursuant to Public Officers Law § 87(2) of FOIL. Acceptance of the identified information by the Department does not constitute a determination that the information is exempt from disclosure under FOIL. Determinations as to whether the materials or information may be withheld from disclosure will be made in accordance with FOIL at the time a request for such information is received by the Department.

30. Data Ownership and Use

All Data is owned exclusively by the Department and will remain the property of the Department. Contractor is permitted to use Data solely for the purposes set forth in the Solicitation and resulting Contract, and for no other purpose. At no time shall the Contractor access, use, or disclose any Confidential Information (including personal, financial, health, or criminal history record information) for any other purpose. The Contractor is strictly prohibited from releasing or using Data or information for any purposes other than those purposes specifically authorized by the Department. Contractor agrees that Data shall not be distributed, used, repurposed, transmitted, exchanged or shared across other applications, environments, or business units of the Contractor or otherwise passed to other contractors, agents, subcontractors or any other interested parties, except as expressly and specifically agreed to in writing by the Department. This provision shall survive the termination of the Contract.

31. Termination

- I. In addition to the provisions set forth in Appendix A or elsewhere in this Contract, this Contract may be terminated as follows:
 - a. For Convenience:

By written notice, this Contract may be terminated at any time by the State for convenience upon sixty (60) calendar days written notice without penalty or other early termination charges due. If the Contract is terminated pursuant to this paragraph, the State shall remain liable for all accrued but unpaid charges incurred through the date of the termination.
 - b. For Cause:

The Contract may be terminated by the Department for cause upon the failure of the Contractor to comply with the terms and conditions of the Contract, provided that the Department shall give the Contractor written notice. Such written notice will specify the Contractor's failure and the termination of the Contract. Termination shall be effective no earlier than

thirty (30) Calendar Days after receipt of such notice unless the Contractor, in the opinion of the Department, has cured such failure. Such cure period may be extended by the Department in writing. The Contractor agrees to incur no new obligations nor to claim for any expenses made after receipt of the notification of termination without the prior written approval of the Department. 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 Contract.

- c. For Suspension or Delisting of Contractor's Securities:
The State, in its sole discretion, may terminate the Contract or exercise such other remedies as shall be available under the Contract, at law or in equity if: the Contractor's securities are suspended or delisted by the New York Stock Exchange, the American Stock Exchange, or the NASDAQ, as applicable: 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.
- d. For Vendor Responsibility Related Findings:
The Department may, in its sole discretion, terminate the Contract if it finds at any time during the Contract term that the Contractor is non-responsible, or that any information provided in the Vendor Responsibility Questionnaire submitted with Contractor's Bid was materially false or incomplete, or if the Contractor fails to timely or truthfully comply with Department's request to update its Vendor Responsibility Questionnaire.
- e. Termination for Non-Responsibility:
Upon written notice to the Contractor, and after a reasonable opportunity to be heard with the appropriate Department officials, the Contract may be terminated by the Commissioner at the Contractor's expense where the Contractor is determined to be non-responsible. In such an event, the Commissioner may complete the contractual requirements in any manner s/he may deem advisable and pursue legal or equitable remedies for the Contractor's breach.
- f. For Lack of Funds:
The Contract 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 is received, in writing, by the Contractor from the Department.

II. Mitigation of Costs:

The Contractor shall not undertake any additional or new obligations under this Contract on or after the receipt of notice of termination without the prior written approval of the State. On or after the receipt of a notice of termination and during the termination notice period, the Contractor shall take all commercially reasonable and prudent actions to mitigate additional costs to the State and close out any unnecessary State obligations or expenses which do not impact the level of service required by the Contractor under the Agreement.

32. Continuing Obligation to Remain Responsible

The Contractor shall at all times during the Contract 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, including the submission of an updated Vendor Responsibility Questionnaire. The Contractor is required to promptly report to the Department any material changes in the information reported in its initial Vendor Responsibility Questionnaire.

33. Suspension of Work

The Department reserves the right to suspend any or all activities under the Contract, at any time, in the best interests of the State. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reasons for such suspension include but are not limited to, a budget freeze on State spending or declaration of emergency. Upon issuance of such notice, the Contractor shall comply with the suspension order. Contractor shall be paid for Services performed prior to suspension in accordance with the Contract. Such suspension will be lifted upon written notice to Contractor. Nothing in this paragraph shall diminish the State's right to terminate the Contract as provided in the Contract.

34. Default

- a. If either party breaches a material provision of this Contract and such breach remains uncured for a period of thirty (30) days after written notice thereof from the other party specifying the breach, then the other party may, at its option, terminate this Contract in accordance with the provisions of the Contract and exercise such other remedies as shall be available under the Contract, at law and/or equity.
- b. If, due to default that remains uncured for the period provided herein, a third party shall commence to perform Contractor's obligations under this Contract, the State shall thereafter be released from all obligations to Contractor hereunder, including any obligation to make payment to Contractor, provided however that the State shall continue to be obliged to pay for any and all Services provided prior to any such date, and if any lump-sum payment has been made, the State shall be entitled to a pro-rata refund of such payment.

35. General Provisions as to Remedies

- a. Except as otherwise set forth in the Agreement, 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 acquiescence to, an event otherwise constituting a breach or default under the Contract.
- b. In addition to any other remedies available to the State under the Contract and state and federal law for Contractor's default, the State may choose to exercise some or all of the following:
 - i. Suspend, in whole or in part, payments due to Contractor under this Contract;
 - ii. Pursue equitable remedies to compel Contractor to perform;
 - iii. Apply Service Credits against amounts due and owing by the State under the Contract; or
 - iv. Require Contractor to cure deficient performance or perform the requirements of the solicitation at no charge to the State.

36. Cooperation with Third Parties

Upon request by the State, the Contractor shall reasonably cooperate with any third party designated by the State such as, but not limited to, other contractors or Subcontractors, including successor Contractors, retained by the State.

37. 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 Contract 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. Contractor shall be authorized to provide copies of the Contract 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.

38. Accessibility

a. Web Accessibility:

Any network-based information and applications development, or programming delivered to or by the State pursuant to this contract or procurement, will comply with Section 508 of the Rehabilitation Act of 1973, as amended, and be consistent with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Information Communication Technology, as such policy may be amended, modified or superseded (the "Accessibility Policy"). The Accessibility Policy requires that the Department's Information Communication Technology shall be accessible to persons with disabilities as determined by accessibility compliance testing. Such accessibility compliance testing will be conducted by Contractor and any report on the results of such testing must be satisfactory to the Department.

b. Language Access for Individuals with Limited English Proficiency:

Executive Order 26 (EO 26), directs executive state agencies that provide direct public services to offer language assistance services (translation and interpretation) to people of Limited English Proficiency (LEP). If applicable, any solution being procured which is deemed to provide a "direct public service" must comply with EO 26.

39. Branding and Universal Web Navigation

Any public facing web-based information and applications development, or programming delivered pursuant to the Contract shall comply with New York State Information Technology Standard, NYS-S16-001- New York Universal Web Navigation and New York State Branding Guidelines as such policy and standard may be amended, modified or superseded.

40. Migration

Contractor's services performed under this Contract will ensure easy migration of the Data including Confidential Information under this Contract by providing its solution in a manner designed to do so. This may include maintaining that information in a format that allows Department to easily transfer it to an alternative application platform. Contractor will make its Application Programming Interfaces (APIs) available to Department.

41. Disclosure of Breach

Notwithstanding on any other provision of this Contract or requirements of law or regulation, the Contractor shall provide notice to the Department as soon as possible following the Contractor's discovery or reasonable belief that there has been unauthorized disclosure or loss of sensitive or Confidential Information ("Security Incident").

- a. Within twenty-four (24) hours of the discovery or reasonable belief of a Security Incident, the Contractor shall provide a written report to the Department detailing the circumstances of the incident, which includes at a minimum:
 - i. A description of the nature of the Security Incident;
 - ii. The type of Department information involved including the categories of data;
 - iii. Who may have obtained the Department information;
 - iv. What steps the Contractor has taken or shall take to investigate the Security Incident;
 - v. What steps the Contractor has taken or shall take to mitigate any negative effect of the Security Incident; and
 - vi. A point of contact for additional information.
- b. Each day, or as otherwise mutually agreed to in writing by the Department and Contractor, thereafter until the Contractor's investigation is complete or otherwise directed by the Department, the Contractor shall provide the Department with a written report regarding the status of the investigation and the following additional information as it becomes available:
 - i. Who is known or suspected to have gained unauthorized access to the Department's information;
 - ii. Whether there is any knowledge if the Department information has been used in an unauthorized fashion or compromised;
 - iii. What additional steps the Contractor has taken or shall take to investigate the Security Incident;

- iv. What steps the Contractor has taken or shall take to mitigate any negative effect of the Security Incident; and
 - v. What corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.
- c. Contractor shall also take immediate and necessary steps needed to restore the information security system to prevent further breaches.
- d. The Contractor shall confer with the Department regarding the proper course for the investigation and risk mitigation. The Department reserves the right to conduct an independent investigation of any Security Incident, and should the Department choose to do so, the Contractor shall reasonably cooperate by making resources, personnel, and systems access available to the Department and the Department's authorized representative(s) who may include the New York State Chief Information Security Office.
- e. Subject to review and approval of the Department, the Contractor shall, at its own cost, without limitation, provide notice that satisfies the requirements of applicable law or regulation to individuals whose personal, confidential, or privileged data were compromised or likely compromised as a result of the Security Incident as well as notice to any regulatory authority as required under the Contract or applicable law or regulation. If the Department, in its sole discretion, elects to send its own separate notice, then all costs associated with preparing and providing notice shall be reimbursed to the Department by the Contractor. If the Contractor does not reimburse such costs within thirty (30) calendar days of the Department's written request, the Department shall have the right to collect such costs including as a set-off against moneys due the Contractor.
- f. The Department reserves the right to require the Contractor to provide commercially standard credit monitoring for any and all individuals affected by the data breach at the sole expense, without limitation, of the Contractor for a period not to exceed 12 months, which shall begin 30 days following the notice of offer from the Contractor of such credit monitoring to those affected individuals, which shall be within a reasonable time following the identification of such affected individuals. The Department reserves the right to require notice by regular or electronic mail.

APPENDIX C - INFORMATION SECURITY REQUIREMENTS

New York State Department of Civil Service
March 2023

The following requirements shall be effective as of the date the Contractor or Contractor Staff first receives, maintains, transmits, accesses or otherwise comes into contact with Confidential Information. These requirements are intended to describe the minimum standard for physical, technical and administrative controls affecting Confidential Information in relation to the Services being provided under the Agreement.

The Department may suspend access to Department Systems or Data at any time if the Department, in its sole discretion, believes Contractor is not complying with any of its obligations herein.

Definitions

All capitalized terms herein shall have the meaning as set forth in this Appendix. If not defined herein will have the meaning as set forth in the resulting Contract including the Appendices and Attachments thereto, or if not defined therein will have the meaning as defined in 45 C.F.R. Parts 160-164.

1. Compliance

Contractor agrees to preserve the confidentiality, integrity and accessibility of Data with administrative, technical and physical measures that conform to federal, State and Department mandates, and the security controls as stated herein, based upon the nature of the Project Services provided, the Data involved, and/or the location where such Project Services are provided. Accordingly, Contractor warrants, covenants and represents that it shall fully comply with all New York State Information Technology Cybersecurity Policies, Standards and Procedures published by the New York State Chief Information Security Office at <https://its.ny.gov/policies> , as amended from time to time, that are applicable to the Project Services being provided by Contractor. Contractor is responsible for understanding which policies and state or federal laws apply to the Project Services and the Data in scope for the Agreement. The Department is required to provide a minimum of thirty (30) days written notice to the Contractor of changes to policies or rules under this section. If the requirements set forth herein are not the same as the New York State enterprise security policy, standard or procedures, then the more restrictive requirement applies. Contractor is responsible for assessing and monitoring Subcontractor control environments for compliance with the standards as documented herein. The Department reserves the right to immediately revoke system or access privileges where such privileges pose an undue risk to the State.

2. Acceptable Use of Information Technology Resources

Contractor, including all Contractor Staff, accessing the State's Information Technology Resources in the course of their work for the Department are required to comply with New York State Information Technology Policy NYS-P14-001 – Acceptable Use of Information Technology Resources, as amended from time to time, prior to accessing any New York State Information Technology resources.

Access to the State's Networks, Systems, Data, or Facilities is provided to support the official business of the Department. Any use inconsistent with the Department's business activities and administrative objectives is considered unacceptable or inappropriate use.

The Department reserves the right to change its policies and rules at any time, with regard to the acceptable use of Department Networks, Systems, Data or Facilities. Non-compliance with these provisions or unacceptable use of Department Networks, Systems or Facilities may result in the revocation of system privileges, termination of the Agreement with Department, and/or criminal and/or civil penalties.

3. Information Security Program

- 3.1. Contractor must maintain a written Information Security Program ("WISP") including documented policies, standards, and operational practices that meet or exceed the requirements and controls set forth herein to the extent applicable to the Project Services and identify an individual within the organization responsible for its enforcement. Contractor's WISP shall address, at a minimum, all security requirements as listed in these requirements, as amended from time to time, and comply with all state and federal data security and privacy laws applicable to the Department. This documentation will be reviewed by Contractor's security official, or its designee, at least annually and shall be updated periodically with changes to organization, technology, or Services. When implementing security controls Contractor shall take a risk-based approach. Any control exceptions which represent risk will be formally documented, monitored, and periodically reviewed.
- 3.2. Upon request by the Department, Contractor's WISP shall be made available to and reviewed by the Department or the Department's representative. At the Department's request and at no cost to the Department, Contractor shall make mutually agreed upon, commercially reasonable modifications to its WISP or to its data security controls in

order to conform to the requirements set forth herein. The Department reserves the right, in its sole discretion, to terminate Contractor's access to Confidential Information until such time as Contractor has made such modifications to its WISP or data security controls. Contractor shall notify the Department in writing of any changes to systems, facilities or WISP controls affecting Confidential Information. This notification should set forth in detail how such changes will impact the Confidential Information.

- 3.3. Contractor shall apply appropriate sanctions against Contractor Staff who fail to comply with security policies and procedures.
- 3.4. Contractor shall have processes and procedures in place so that Security Incidents will be reported through appropriate communications channels as quickly as possible. Contractor shall periodically test, review, and update such processes and procedures. All Contractor Staff shall be made aware of their responsibility to report any Events prior to being granted access to any Confidential Information. If at any time during the Agreement, Contractor becomes aware of an Event or that it or any of its Subcontractors will or do not meet the obligations described within these requirements, Contractor will immediately notify the Department.
- 3.5. Contractor shall periodically conduct an accurate and thorough assessment of the potential risks and vulnerabilities to the confidentiality, integrity, and Availability of Confidential Information. The assessment must be reviewed by Contractor's security official and used to inform the Contractor's information security program.
- 3.6. Upon request, the Contractor shall identify to the Department the security official who is responsible for the development and implementation of the Contractor's policies and procedures.

4. Right to Assess, Audit and Certify

- 4.1. The Department, or its designated agents, may assess or audit the effectiveness of Contractor's compliance with requirements herein. The Department shall provide advanced notice of any assessment or audit. The Parties shall mutually agree in writing to the timing of the assessment or audit.
- 4.2. Upon request, Contractor shall complete a security controls assessment conducted by the Department or its designated agent ("Security Assessment"). To the extent that the security controls assessment identifies any risks or deficiencies for which remediation is required,

such remediation requirements or compensating controls (and the timeframes within which the remediation requirement or compensating control must be successfully implemented) will be provided in writing to the Contractor. The Department and Contractor agree to negotiate in good faith a mutually agreeable timeframe within which the remediation requirements or compensation controls must be successfully implemented. If an agreement cannot be had, the Department will make the final determination regarding the timeframe. Contractor's failure to complete any remediation requirements within the required timeframe shall be deemed to be a material breach of the Agreement.

Where the Contractor is a Business Associate, or hosts, maintains or has access to Department Protected Health Information, certification in the HITRUST Common Security Framework (CSF) is required. The Department, in its discretion, may accept a comparable industry accepted security assessment certification in lieu of a HITRUST Common Security Framework (CSF) certification. (For purposes of these requirements a SOC 2 attestation report is deemed a comparable industry accepted assessment.) If an alternative security assessment certification is accepted, then such alternative certification shall replace the following references to HITRUST.

- 4.2.1. If the Contractor has a HITRUST CSF Certification applicable to the Project Services and/or applications in scope for the Agreement as of the Effective Date of the Agreement and maintains it throughout the Agreement, then that HITRUST CSF certification, at the discretion of the Department, will be accepted in lieu of a security controls assessment identified in Section 4.2. Documentary evidence for HITRUST CSF certification must be provided to Department upon request and include, at a minimum, sections of the HITRUST CSF report that demonstrate Contractor's scoring across all domains and any corrective action plans required as a condition of certification. Upon Contractor's written request, the Department shall return all such documentary evidence to Contractor. The Department may ask questions related to the protection of Confidential Information after review of documentation supporting the HITRUST CSF Certification. The Contractor's HITRUST CSF Certification does not waive Department's rights to assess under Section 4.1 herein or other audit rights, including rights to onsite facility inspection, provided elsewhere in the Agreement.

4.2.2. If the Contractor is without a HITRUST CSF certification or an approved alternative security assessment certification as of the Effective Date of the Agreement, Contractor shall:

- Complete and provide to the Department a HITRUST CSF Self-Assessment Report no later than 90 days after the Effective Date of the Agreement; and
- Obtain and provide to the Department a HITRUST CSF Validated Report no later than 18 months after the Effective Date of the Agreement; and
- Obtain and provide to the Department a HITRUST CSF certification and associated documentation, including but not limited to complete validated reports and corrective action plans, no later than 24 months after the Effective Date of the Agreement.

4.2.3. If Contractor has begun the process of obtaining a HITRUST CSF Certification before the Effective Date of the Agreement, then Contractor represents and warrants to the Department that all corrective action plans that are necessary to obtain a HITRUST CSF Validated Report and/or HITRUST CSF Certification and that have been identified to Contractor prior to the Effective Date shall be communicated to the Department and documented in writing to the Department.

4.2.4. Within 30 days of identification, the Contractor shall report to the Department any findings through the HITRUST engagement that materially impacts Confidential Information. In addition, the Contractor will provide the associated corrective action plans identified during any self-assessment or third-party assessment, including any assessment related to Contractor's independent certification/attestation. Contractor will provide the Department with any further Information associated with such findings, as reasonably requested by the Department. Upon Contractor's written request, the Department shall return all such documentary evidence to Contractor.

4.2.5. If at any time during the Agreement, the CSF Certification is withdrawn for any reason, Contractor will contact the Department within 24 hours of learning of the issue to

provide information and remediation plans regarding the withdrawal.

- 4.3. From time-to-time Contractor may be requested to respond to, inform and provide updates regarding specific high-risk security gaps or exposures that exist for new or emerging security vulnerabilities that are made publicly known for systems, applications, hardware devices, etc. In all instances Contractor will provide a response to any Department inquiry within five business days and will provide specific details as to the questions asked to ensure that the Department can appropriately evaluate the risk or exposure to the Confidential Information while still protecting the systems, applications, hardware devices etc. from further vulnerabilities.

5. Encryption

- 5.1. Contractor shall apply encryption methodology that, at minimum, conforms to the Federal Information Processing Standards Publication 140-3 Security Requirements for Cryptographic Modules and applicable state and federal regulations ("Approved Encryption").
- 5.2. Cryptographic key management procedures must be documented and include references to key lifecycle management (including provisioning, distribution, and revocation) and key expiration dates.
- 5.3. Access to encryption keys must be restricted to named administrators. Encryption keys must be protected in storage. For example, methods of acceptable key storage include encrypting keys or storing encryption keys within a hardware security module (HSM). Data-encrypting keys should not be stored on the same systems that perform encryption/decryption operations.
- 5.4. Except as otherwise agreed to in writing by the Contractor and Department, Confidential Information must be encrypted while in transit and at rest across at least the following types of assets:
 - Public shared Networks
 - Non-wired Networks
 - Cloud Services
 - Desktop and portable computing devices
 - Mobile devices
 - Portable media
 - Back-ups
 - Application or Network servers

- 'Plug & play' storage devices

6. Network and Systems Security

- 6.1. Contractor shall utilize and maintain a commercially available, industry standard malware detection program which includes an automatic update function to ensure detection of new malware threats.
- 6.2. Contractor shall maintain an intrusion detection or prevention system that detects and/or prevents unauthorized activity traversing the Network.
- 6.3. Contractor shall have technical controls to detect, alert, and prevent the unauthorized movement of Data from Contractor's control (commonly referred to as Data Loss Prevention).
- 6.4. Networks or applications that contain Confidential Information must be separated from public Networks by a firewall to prevent unauthorized access from the public Network.
- 6.5. At managed interfaces, Network traffic is denied by default and allowed by exception (i.e., deny all, permit by exception).
- 6.6. Contractor shall establish security and hardening standards for Network devices, including Firewalls, Switches, Routers, Servers, and Wireless Access Points (baseline configuration, patching, passwords, and access control).
- 6.7. Web content filtering must be in place to restrict external webmail, instant messaging, file sharing and other Data leak vectors for any Contractor Staff with direct or indirect access to Confidential Information.
- 6.8. Quarterly (unless the System has an Impact Risk rating of High* in which case monthly) vulnerability scans must be performed, and intrusion detection and identity management systems must be installed and monitored on all systems and components that handle, process, or store Confidential Information. Upon request, report summaries must be provided to the Department, including confirmation of remediation for vulnerabilities identified as high- or medium-risk (or equivalent classifications). * See NYS-S15-002 Vulnerability Management Standard.
- 6.9. At a minimum, Contractor shall engage a qualified third party to perform annual penetration testing of Contractor's Networks containing

Confidential Information. The scope of the penetration testing must, at a minimum, include all internal/external systems, devices and applications that are used to process, store, or transmit Confidential Data. Contractor must provide the Department with summary results and a remediation plan at the Department's request.

- 6.10. If Contractor provides products or Services related to the Agreement through a Department portal or mobile applications, especially those which are internet-facing, or use Department domains, the Department's portal, mobile applications and domain are subject to Department scanning and assessments. Contractor agrees to remediate vulnerabilities identified during this process in a manner and timeline acceptable to the Department.
- 6.11. Contractor shall ensure that no unencrypted Confidential Information is stored in any system that is internet facing.
- 6.12. Contractor shall use secure means (i.e., HTTPS, FTPS) for all electronic transmission or exchange of System, user and application information with the Department.

7. Mobile Device Security Controls

- 7.1. Contractor must have a documented mobile device policy that includes a documented definition for mobile devices and the acceptable usage and security requirements for all mobile devices.
- 7.2. Where Contractor permits Bring Your Own Device (BYOD), Contractor must have a BYOD policy that defines the device and eligibility requirements for BYOD usage in the event that Confidential Information will be viewed or stored on devices that are not Contractor-issued mobile devices.
- 7.3. Contractor must post and communicate the mobile device policy and requirements through Contractor's security awareness and training program.
- 7.4. Contractor must have a centralized mobile device management solution (MDM) deployed to all mobile devices that are permitted to store, transmit, or process Confidential Information.
- 7.5. Contractor's mobile device policy must require the use of encryption for either the entire device or for Confidential Information and must be enforceable through Contractor's MDM solution or other technical controls.

- 7.6. Contractor must enforce password policies for Contractor-issued mobile devices and/or BYOD mobile devices using Contractor's MDM solution or other technical controls.
- 7.7. Contractor's Information Technology department must provide remote wipe or corporate Data wipe for all mobile devices in the event that Confidential Information will be viewed or stored on mobile devices.

8. System and Application Controls

- 8.1. All Confidential Information must be securely stored at all times to prevent loss and unauthorized access or disclosure.
- 8.2. Laptop and workstation systems that access Confidential Information remotely must utilize endpoint protection which includes a personal firewall and anti-malware protection.
- 8.3. Operating systems and application software used must be currently supported by the manufacturer.
- 8.4. Current versions of operating system and application software must be maintained, and patches applied in a timely manner for all systems and applications that receive, maintain, process, or otherwise access Confidential Information.
- 8.5. Confidential Information must not be used in any non-production environment such as testing or quality assurance unless de-identification of the Data has been performed. In the event that de-identification is not practical or feasible, compensating controls must be in place protecting the Data to the same level of protection as afforded to the production environment. Confidential Information must not be placed into a nonproduction cloud computing environment unless deidentified or compensating controls are in place protecting the Data to the same level of protection as afforded to the production environment.
- 8.6. Confidential Information must be segmented from non-Department Information so that appropriate controls are in place to identify the Data as Department's in all instances, including backup and removable media, and to appropriately restrict access only to users authorized to view the Data. Logical separation must allow Data to be deleted when it is no longer required.

- 8.7. Logical controls, virtual machine zoning, virtualization security and segregation must be in place to help prevent attacks and exposure in multi-tenancy environments containing Confidential Information.
- 8.8. Contractor shall maintain an asset management system which records the movement of hardware and electronic media and any persons responsible therefore.

9. Software Development Lifecycle

- 9.1. Contractor must use industry standards such as BSIMM, NIST, OWASP, etc. to build in security for its Systems Development Lifecycle (SDLC). See also NYS-S13-001 for further information on the SDLC requirements at its.ny.gov/document/secure-systemdevelopment-life-cycle-ssdlc-standard.
- 9.2. Contractor must use both an automated and manual source code analysis tool to detect and remediate security defects in code prior to production deployment.
- 9.3. Contractor must have policies and procedures in place to triage and remedy reported bugs and security vulnerabilities for the Project Services it provides to Department.
- 9.4. Contractor must have controls in place to prevent unauthorized access to its or Department's application, program, or object source code and ensure that access is restricted to authorized personnel only.
- 9.5. National identifiers or Social Security Numbers must not be utilized as User IDs for login to applications.

10. Physical Controls for the Protection of Confidential Information

- 10.1. All Confidential Information received or created in paper form must be protected from viewing by unauthorized persons.
- 10.2. A clean desk policy will be enforced to ensure proper safeguarding of all hard copy Confidential Information.
- 10.3. Visitor logs documenting all individuals who are not Contractor Staff who gain access to the facility where Confidential Information is processed will be maintained.

- 10.4. Confidential Information shall not leave control of the Contractor without the written approval of Department.
- 10.5. Servers, enterprise data storage devices, backup tapes and media, and other computing devices that contain Confidential Information used to support Network communications must be located in a secure and restricted access location.
- 10.6. Monitoring cameras (e.g., CCTVs) must monitor ingress and egress to sensitive areas within the facility. The monitoring equipment (e.g., CCTV) feed must be monitored either internally or externally by a qualified team. Alerting procedures must be defined and notification performed to qualified Contractor personnel. Processes for retention and review of security logs (e.g., access and visitor logs, CCTV) must be in place. Cameras must be positioned in a way that Confidential Information is not readable on screens and/or on CCTV recordings or screen captures.
- 10.7. When investigation of an incident or Breach is required, summary reports related to the incident or Breach and all audit trails and CCTV recordings shall be made available to Department upon request and in a timely manner. Upon Contractor's written request, the Department shall return all such documentary evidence to Contractor.

11. Access Control

- 11.1. Prior to gaining access to Confidential Information, Contractor Staff will have appropriate background checks completed in compliance with state and federal law. See Standard Clauses for All Department Contracts (Appendix B), Onboarding and Suitability Determinations.
- 11.2. Security awareness training will be completed by Contractor Staff prior to access being granted to Confidential Information, and then completed on an annual basis going forward so long as access to Confidential Information continues. This training should include, at a minimum, guidance on defending against malware, protecting passwords, monitoring and reporting system notifications, social engineering, and handling sensitive Data. The Department may require Contractor Staff to complete Department specific security training at no additional cost to the Department.
- 11.3. Physical and logical access will be granted to the minimum Confidential Information necessary to meet the requirements of the user's scope of responsibilities.

- 11.4. Access reviews will be performed at least quarterly for privileged user accounts and at least annually for non- privileged user accounts. The Department reserves the right to request the Contractor to perform an additional access review for non-privileged user accounts if there is evidence of inappropriate access.
- 11.5. Only those individuals providing Project Services to the Department, or those who are responsible for administering or managing systems that contain Confidential Information, shall be authorized to access systems containing Confidential Information.
- 11.6. All Contractor Staff that are no longer required or authorized to access Confidential Information or systems that contain Confidential Information must have access promptly disabled.
- 11.7. Access to Confidential Information and systems that contain Confidential Information must be access controlled through the use of individual user IDs and passwords that substantially meet the NYS Authentication Tokens Standard NYS-S14-006 standard complexity rules and password lifetimes.
- 11.8. If it is suspected that a password has been compromised, the password must be immediately changed or reset.
- 11.9. Processes must be in place to create audit trails capable of determining who has accessed Confidential Information and/or systems that contain Confidential Information.
- 11.10. Remote access to systems or Networks that contain Confidential Information must use multi-factor authentication and a connection with Approved Encryption as defined in Section 5 above.
- 11.11. The Department reserves the right to immediately terminate remote access connections to Department or State Networks and Systems.
- 11.12. Upon request, Contractor shall provide reports within 48 hours for:
 - 11.12.1. List of all individuals with access to Confidential Information and/or systems that contain Confidential Information and the level of access granted;
 - 11.12.2. List of activity associated with any user ID who has access to Confidential Information; and
 - 11.12.3. Account management capabilities, such as account lockouts for unsuccessful logon attempts, defined inactivity

times, remote access allowances, specific success and failure events, and management of elevated privilege accounts must be enforced.

- 11.13. All identity credentialing, authentication, Authorization, and access control events must be logged, and those logs are subject to periodic audit by the Department. At a minimum, the logs of all specified success and failure events associated with identity and access management in the computing environment it manages must be produced. These logs must then be archived for at least twelve months. These archived logs must be searchable and or discoverable. Contractor may redact information regarding those individuals who do not have access to the Department's data.

12. Data Protection

Contractor must protect Confidential Information from unauthorized access, use, alternation, disclosure, or dissemination. The Contractor must, in accordance with applicable law and the instructions of the Department, maintain such Data for the time period required by applicable law, exercise due care for the protection of Data, and maintain appropriate data integrity safeguards against the deletion or alteration of such Data. If any Data is lost or destroyed because of any act or omission of the Contractor or any non-compliance with the obligations of this Contract, then Contractor shall, at its own expense, use its best efforts to reconstruct such Data as soon as feasible. In such event, Contractor shall reimburse the Department for any costs incurred by the Department in correcting, recreating, restoring or reprocessing such Data or in providing assistance therewith.

13. Physical Data Transport

The Contractor shall use, if applicable, reputable means to physically transport Data. Deliveries must be made either via hand delivery by an employee of the Contractor or by restricted delivery via courier (e.g., FedEx, United Parcel Service, United States Postal Service) with shipment tracking and receipt confirmation. This requirement applies to transport between the Contractor's offices, to and from Subcontractors, and to the Department.

14. Data Return and Destruction

At the expiration or termination of the Agreement, at the Department's option, the Contractor must provide the Department with a copy of the Data, including metadata and attachments, in a mutually agreed upon, commercially standard format. The Contractor must provide the Department continued access to the Data beyond the expiration or termination of the Agreement for the period designated in the Contract.

Thereafter, except for Data required to be maintained by law or this Agreement, Contractor shall destroy Data from its systems and wipe all its data storage devices to eliminate any and all Data from Contractor's systems. The sanitization process must comply with New York State Security Policy NYS-S13-003. If immediate purging of all data storage components is not possible, the Contractor will certify that any Data remaining in any storage component will be safeguarded to prevent unauthorized disclosures. Contractor must then certify to the Department, in writing, that it has complied with the provisions of this paragraph.

15. Offshore Security Requirement

Confidential Information, including Protected Health Information, is not permitted to be hosted, maintained, stored, processed or otherwise accessed outside CONUS ("offshore").

16. Contingency Planning

Contractor will have documented Business Continuity and Disaster Recovery plans in place that include Information security controls. Such plans will be tested at least annually.

17. Incident Response

17.1. Contractor will have a documented Incident Response Plan. Such plan will be tested at least annually.

17.2. Incident response roles and responsibilities must be clearly outlined between Contractor and Department as appropriate.

18. Payment Card Industry Data Security Standard

If, in performing Project Services to or on behalf of Department, Contractor acts as a Merchant or payment card processor as defined by the Payment Card Industry Data Security (PCI DSS) standard, then Contractor agrees to comply with the applicable PCI DSS requirements.

19. Litigation Holds

The Contractor must provide a detailed mechanism for how litigation holds will be implemented. This description shall include how metadata will be created, accessed, and stored in a cloud environment.