

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
And
AON CONSULTING, INC.**

Actuarial and Benefits Management Consulting Services

AGREEMENT NO. C000692

THIS Agreement 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, Agency Building 1, Albany, NY, 12239 and Aon Consulting, Inc. (“Contractor”), a corporation authorized to do business in the State of New York with a principal place of business located at 400 Atrium Drive, Somerset, NJ 08873, and collectively hereinafter referred to as “the Parties.”

WITNESSETH

WHEREAS, New York State, through the Department, oversees the New York State Health Insurance Program (“NYSHIP”) for New York State employees and retirees and their dependents; and

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

WHEREAS, on April 5, 2017, the Department of Civil Service issued a Request for Proposal (RFP) entitled, “Actuarial and Benefits Management Consulting Services” to secure the services of a qualified organization to provide actuarial and benefits management consulting services to the Employee Benefits Division (“EBD”) of the Department for use in the administration of NYSHIP and other benefits administered by the Department (“Project” or “Project Services”); and

WHEREAS, after thorough review and evaluation by the State of Proposals received in response to the RFP, the Contractor’s Proposal was selected as representing the best value to the State of New York; and

WHEREAS, the Department, in reliance upon the expertise of the Contractor, desires to engage the Contractor to deliver Project Services, in the manner set forth in the RFP and the Contractor’s Proposal, pursuant to the terms and conditions set forth in the Agreement;

THEREFORE, the Parties agree as follows:

ARTICLE I: DEFINITION OF TERMS

- 1.1.0 **Affiliate** means a person or organization which, through stock ownership or any other affiliation, directly, indirectly, or constructively controls another person or organization, is controlled by another person or organization, or is, along with another person or organization, under the control of a common parent.
- 1.2.0 **AG** means the New York State Attorney General's Office.
- 1.3.0 **Agreement or Contract** means the Agreement entered into between the Parties resultant from the RFP that was issued on April 5, 2017.
- 1.4.0 **Benefits Option Transfer Period** means the period of time (usually November) of each year when employees and retirees are allowed to change from one health insurance option to another.
- 1.5.0 **Best Value** means the basis for awarding a contract for services to a responsible and responsive Offeror, who can best optimize quality, cost and efficiency.
- 1.6.0 **Business Day(s)** means Monday through Friday, except for those designated as Business Holidays.
- 1.7.0 **Business Holiday(s)** means legal Holidays observed by the State.
- 1.8.0 **Calendar Year/Annual** means a period of 12 months beginning with January 1 and ending with December 31.
- 1.9.0 **Commissioner** means the Commissioner of the New York State Department of Civil Service.
- 1.10.0 **Contract or Agreement** means the Agreement entered into between the Parties resultant from the RFP that was issued on April 5, 2017.
- 1.11.0 **Contract Effective Date** means the date that the Agreement is approved by the New York State Office of the State Comptroller.

- 1.12.0 **Contractor** means the successful Offeror selected as a result of the evaluation of Offeror's Proposals submitted in response to the RFP issued on April 5, 2017; who executes a Contract with the Department to provide Project Services.
- 1.13.0 **Day(s)** means calendar Days unless otherwise noted.
- 1.14.0 **Department or DCS** means the New York State Department of Civil Service.
- 1.15.0 **DOB** means the New York State Division of the Budget.
- 1.16.0 **EEO** means the Federal Equal Employment Opportunities Act.
- 1.17.0 **Empire Plan** means the self-funded, experience-rated health plan administered by the NYS Department of Civil Service to provide health insurance benefits for the employees, retirees and eligible dependents of New York State and NYSHIP Participating Agencies and Participating Employers. It has four components, the Medical Program, the Hospital Program, the Managed Mental Health and Substance Abuse Program, and the Prescription Drug Program.
- 1.18.0 **Employee Benefits Division (EBD)** means the Division of the New York State Department of Civil Service responsible for administration of the New York State Health Insurance Program.
- 1.19.0 **ET** means prevailing Eastern Time.
- 1.20.0 **GOER** means the New York State Governor's Office of Employee Relations.
- 1.21.0 **HIPAA** means Health Insurance Portability and Accountability Act of 1996, as amended.
- 1.22.0 **HMO** means one of the Health Maintenance Organizations which participate in the New York State Health Insurance Program.
- 1.23.0 **Joint Labor Management Committee (JLMC)** means a committee consisting of representatives of NYS' collective bargaining units, the Department of Civil Service (DCS), and the Governor's Office of Employee Relations (GOER) which is charged with the responsibility to cooperatively develop and oversee administration of health

care programs for State-represented employees and to make mutually agreed upon changes to health insurance plan benefits.

- 1.24.0 **Key Subcontractor(s)** means those vendors with whom the Contractor subcontracts to provide Project Services and incorporates as a part of the Contractor's Project Team. Key Subcontractors include all vendors who will provide \$100,000 or more in Project Services over the term of the Agreement that results from the RFP issued on April 5, 2017, as well as any vendor who will provide Project Services in an amount lower than the \$100,000 threshold, and who is a part of the Contractor's account team.
- 1.25.0 **MWBE** means Minority-and Women-Owned Business Enterprises.
- 1.26.0 **New York State Health Insurance Program (NYSHIP)** means the health insurance program established by NYS to provide health insurance protection to employees, retirees and eligible dependents of New York State and Participating Agencies and Participating Employers. The program is administered by the NYS Department of Civil Service. NYSHIP provides health insurance coverage through the Empire Plan, Health Maintenance Organizations (HMOs); and the Student Employee Health Plan (SEHP).
- 1.27.0 **NYBEAS** means the New York Benefits Eligibility & Accounting System, a computerized enrollment system utilized by the Department for the administration of employee benefits.
- 1.28.0 **NYS or State** means the State of New York (including the New York State Department of Civil Service).
- 1.29.0 **Offeror** means any responsible and eligible entity submitting a responsive Proposal to the RFP. It shall be understood that references in the RFP to "Offeror" shall include said entity's proposed Key Subcontractor or Affiliates, if any.
- 1.30.0 **OSC** means the New York State Office of the State Comptroller.
- 1.31.0 **Participating Agency (PA)** means any unit of local government such as school districts, special districts, or district or municipal corporations that elects with the approval of the President of the Civil Service Commission, to participate in the New York State Health Insurance Program.

- 1.32.0 **Participating Employer (PE)** means any public authority, public benefit corporation, or other agency subdivision or quasi-public organization of NYS that elects, with the approval of the President of the Civil Service Commission, to participate in the New York State Health Insurance Program.
- 1.33.0 **Plan** means the Empire Plan.
- 1.34.0 **Plan Sponsor** means the Council on Employee Health Insurance which is composed of the President of the Civil Service Commission, Director of the Governor's Office of Employee Relations, and the Director of Division of the Budget.
- 1.35.0 **Plan Year** means the period from January 1 to December 31 of each year, unless specified otherwise by the Department.
- 1.36.0 **President** means the President of the Civil Service Commission who is also the Commissioner of the Department.
- 1.37.0 **Project Services** means the entire scope of actuarial and benefits management services to be provided by the Contractor pursuant to the terms and conditions of the Agreement.
- 1.38.0 **Project Management Team** means the Contractor and those Key Subcontractors, if any, utilized by the Contractor who collectively undertake and perform the Project Services which are the subject of the Agreement.
- 1.39.0 **Proposal or Submissions** means the Contractor's Administrative Proposal, Technical Proposal and Cost Proposal, including all responses to supplemental requests for clarification, information, or documentation submitted during the course of the Procurement.
- 1.40.0 **RFP or Procurement** means the Request for Proposals, entitled "Actuarial and Benefits Management Consulting Services," dated April 5, 2017.
- 1.41.0 **State** means the State of New York.
- 1.42.0 **Student Employee Health Plan (SEHP)** means a health insurance plan for graduate student employees of the New York State University and the New York City University

systems that provides benefits through the various Empire Plan Insurance Contracts. Like the Empire Plan, SEHP includes hospital, medical, managed mental health and substance abuse benefits, and prescription drug benefits, SEHP is administered by the New York State Department of Civil Service, Employee Benefits Division.

ARTICLE II: AGREEMENT DURATION AND AMENDMENTS

- 2.1.0 The Agreement is for the five-year period commencing on January 1, 2018 and continuing through and including December 31, 2022, subject to approval by the AG and the OSC, with a maximum value of \$2,413,864.00
- 2.2.0 The Agreement is subject to amendment(s) only upon mutual consent of the Parties, reduced to writing and approval by the AG and OSC.

ARTICLE III: INTEGRATION

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

ARTICLE IV: DOCUMENT INCORPORATION AND ORDER OF PRECEDENCE

- 4.1.0 The Agreement consists of:
 - 4.1.1. The body of the Agreement (that portion preceding the signatures of the Parties in execution) and any amendments thereto;
 - 4.1.2 Appendix A - Standard Clauses for all New York State Contracts;
 - 4.1.3. Appendix B – Standard Clauses for all Department of Civil Service Contracts;
 - 4.1.4 Appendix C – Third Party Connection and Data Exchange Agreement; and Appendix C-1 – ITS-AGS Information Security;

- 4.1.5 Appendix D – Participation by Minority Group Members and Women With Respect to State Contracts: Requirements and Procedures; Appendix D-1 - Minority and Women-Owned Business Enterprises-Equal Employment Opportunity Policy Statement; and Appendix D-2 - MWBE Utilization Reporting Responsibilities under Article 15-A;
- 4.1.6 The following Exhibits attached and incorporated by reference to the body of the Agreement:
 - 4.1.6a Exhibit A: which includes the MacBride Act Statement; and the Non-Collusive Bidding Certification;
 - 4.1.6b Exhibit B: the Request for Proposals entitled, “Actuarial and Benefits Management Consulting Services,” dated April 5, 2017, and Exhibit B-1, the official Department response to questions raised concerning the RFP, dated April 27, 2017;
 - 4.1.6c Exhibit C: the Contractor’s Proposal; Exhibit C-1: written responses to clarifying the Contractor’s Proposal which includes the Contractor’s responses to the Department’s inquiries, and Exhibit C-2: Written responses to the Management Interview; and
 - 4.1.6d Exhibit D: Contractor’s Fee Schedules.
- 4.1.7 In the event of any inconsistency in, or conflict among, the document elements of the Agreement identified above, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the following order:
 - 4.1.7a First, Appendix A - Standard Clauses for All New York State Contracts;
 - 4.1.7b Second, Appendix B – Standard Clauses for All Department of Civil Service Contracts;
 - 4.1.7c Third, Appendix C – Third Party Connection and Data Exchange Agreement; Appendix C-1 ITS-AGS: Information Security

- 4.1.7d Fourth, Appendix D: Participation by Minority Group Members and Women With Respect to State Contracts: Requirements and Procedures; Appendix D-1 Minority and Women-Owned Business Enterprises-Equal Employment Opportunity Policy Statement; and Appendix D-2: MWBE Utilization Reporting Responsibilities under Article 15-A;
- 4.1.7e Fifth, any Amendments to the body of the Agreement;
- 4.1.7f Sixth, the body of the Agreement;
- 4.1.7g Seventh, Exhibit A: which includes the MacBride Act Statement; and the Non- Collusive Bidding Certification;
- 4.1.7h Eighth, Exhibit B: the Request for Proposals entitled, "Actuarial and Benefits Management Consulting Services," dated April 5, 2017, and Exhibit B-1, the official Department response to questions raised concerning the RFP, dated April 27, 2017;
- 4.1.7i Ninth, Exhibit C: the Contractor's Proposal; Exhibit C-1: written responses to clarifying the Contractor's Proposal which includes the Contractor's responses to the Department's inquiries, and Exhibit C-2: Written responses to the Management Interview; and
- 4.1.7j Tenth, Exhibit D: Contractor's Fee Schedules

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

ARTICLE V: LEGAL AUTHORITY TO PERFORM

5.1.0 The Contractor represents that the Contractor possesses the legal authority to perform Project Services in accordance with the terms and conditions of the Agreement.

5.2.0 The Contractor shall maintain appropriate corporate and/or legal authority, which shall include but is not limited to the maintenance of an administrative organization capable of delivering Project Services in accordance with 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.

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

ARTICLE VI: PROJECT SERVICES

- 6.1.0 During the term of the Agreement, the Contractor will be responsible for the performance of those services/tasks as described herein this Article VI of the Agreement.
- 6.2.0 Task #1 - Premium Rate Development. Currently, each year, the Department develops Empire Plan premium rates based on recommendations made by the Empire Plan vendors for each of the Plan's component contracts, specifically the Empire Plan's Hospital, Medical; Mental Health and Substance Abuse and Prescription Drug contracts. These rates are subject to the approval of the New York State Division of Budget ("DOB"). Since Empire Plan is self-funded, the Department seeks assistance from the Contractor in the review of the reasonableness of the vendors' rate recommendations ("Task #1"). During the term of the Agreement, one or more of the Empire Plan contracts may be merged into a single contract.

Rate analysis to be performed by the Contractor shall focus primarily on each vendor's projected aggregate experience and the justification provided by the vendors to support their trend projections and/or premium recommendations. As part of this task, the Contractor will also evaluate the costs and/or savings associated with any Plan revisions, which may be implemented in the coming Plan Year.

During the term of the Agreement, the Contractor shall:

- 6.2.1 Submit a Task #1 work plan to the Department prior to the beginning of the rate renewal process for the upcoming Plan Year. This Task #1 work plan must be submitted to the Department not later than July 1 and it must be acceptable to the Department. The first Plan Year under the Agreement will begin on January 1, 2019, and, as such, the first Task #1 work plan under the Agreement is due on July 1, 2018;

- 6.2.2 Submit to the Department the Contractor's independent premium rate estimates not later than August 31 of each year of the Agreement;
- 6.2.3 Review and provide a written evaluation of the Empire Plan vendors' rate proposals. This will include a review of all factors used by the vendors to determine premium requirements including, but not limited to, projected paid and incurred claims, vendor retention, and any deficit recoupment load. A preliminary report will be due on September 20 with the final written report due on October 15 unless extended by the Department;
- 6.2.4 Provide written commentary on the Empire Plan vendors' premium rate development and projections to the Department.
- 6.2.5 Support the Department in its analysis of the Empire Plan rates submitted by the vendors, including attendance at and participation in meetings over a two-day period as deemed necessary by the Department;
- 6.2.6 Assist the Department in presenting rate proposals to GOER, DOB, the Joint Labor Management Committee, and other entities, as the Department deems necessary. At least one (1) all day presentation meeting is anticipated annually as part of the Rate Renewal process. (Note: While the Contractor may be called upon to make presentations to, or brief other NYS entities involved in the NYSHIP, the Department's EBD is the "client," and as such, the Contractor will contract with and be accountable to DCS' EBD staff.);
- 6.2.7 Support the Department by providing comparative analyses, as requested, using data of other large employers;
- 6.2.8 Submit a final written report with recommendations on the proposed rates (i.e., the final "Benefits Management Consultant Final Report and Recommendations" report);
- 6.2.9 Ensure that principal project staff is available to EBD management for ad hoc discussion of any aspect of Task # 1 throughout the Rate Renewal process; and

6.2.10 Participate in and adhere to the following Rate Renewal process and cycle:

Date (Note: All dates shown are on or about)	Rate Renewal Process activity
July 1	The Contractor submits its Task #1 work plan for the upcoming Plan Year.
Early-August	The Department sends each Benefit Provider a rate renewal call letter which outlines the minimum documentation required to support the rate requests and anticipated rate adjustments. See Exhibit II.G entitled "Sample Call Letter" for a sample call letter.
August 31	Contractor develops and submits independent premium rate estimates (i.e., "Benefits Management Consultant Independent Experience Projections and Premium Requirements" report).
August 31	The vendors submit rate renewal proposals and supporting documentation to the Department and the Contractor.
Beginning in the 1st week of September and continuing throughout the Rate Renewal process	The Department and the Contractor work together to ensure consistent understanding of the vendors' rate renewal proposals and discuss and identify issues and questions which may need further clarification by the vendors.
2nd week of September	Vendors brief the Health Insurance Council staff and Contractor on their rate renewal proposals.
September 20	Contractor provides comment to the Department in regard to the vendors' rate renewal proposals.
3rd week of September through period prior to finalization of rate recommendations	The Department, with the assistance of the Contractor, discusses any recommended adjustments to the proposed rates.
1st week of October	The Department and the Contractor brief the Joint Labor Management Committee regarding the vendors' rate renewal proposals (During this same meeting, the vendors also brief the committee on their respective proposals).
October 15	Contractor submits its final written report and recommendations to the Department (i.e., final "Benefits Management Consultant Final Report and Recommendations" report).
October 15	The Department submits health insurance rates to the Division of the Budget for

	approval.
October 23	The Division of the Budget approves rates.
November	Benefits Option Transfer Period*
November 15	The Department loads approved rates into its computerized accounting system (NYBEAS) and notifies all participants of rate change.
January 1	Effective date of approved rates.

*The Contractor has no role in NYS' annual option transfer activities, nor will the Contractor be called upon to develop or review associated employee communication materials as a Task #1 responsibility.

6.3.0 Task #2 – Quarterly Analysis. During the term of the Agreement, the Contractor shall:

6.3.1 Review and prepare comments on the Empire Plan vendors' first and fourth quarter reports. Said quarterly reports are based on calendar year; the 1st quarter is January through March and the 4th quarter is October through December. The required reviews will be conducted twice per calendar year, during April/May for the 1st quarter reports and January/February for the 4th quarter reports.

6.3.2 Provide a written report of its review of each of the vendors' reports (vendor reports are due no later than the 23rd day of the month following the last month of the quarter under review). The report shall include the Contractor's assessment of the reasonableness of the vendors' projected current year experience and projected rates for the subsequent year, the Contractor's projected annual claim amount by vendor for the calendar year (January 1 – December 31), and the Contractor's observed and projected trends, including any other factors that may impact the projected incurred claims experience. Final copy of the required report ("Quarterly Contractor Commentary Report") must be submitted to the Department within forty-five (45) calendar days from the end of the quarter under review. These reports must be acceptable to the Department.

6.4.0 Task #3 – GASB 75 Valuation. Governmental Accounting Standards Board Statement No. 75 ("GASB 75") addresses Other Postemployment Benefits ("OPEB") by state and

local governments. In accordance with the requirements set forth in GASB 75, the Contractor shall perform an actuarial valuation and develop related reports for the benefit of the Department. In addition to the OPEB of State employees, the valuation must include the OPEB for employees of State University of New York (“SUNY”) Campuses, Hospitals and Construction Fund for the various differing fiscal years that will ultimately roll up into the fiscal year financial statements of New York State for the year under review. The NYSHIP Participating Employers (PEs) and Participating Agencies (PAs) are not included in the valuation; however, they each receive a report that presents the actuarial assumptions that were used in NYS’ valuation as guidance to assist them in preparing their own valuations.

The scope of the valuation is limited to post-retirement healthcare benefits. The State administers other benefits (e.g. dental and life insurance) for retirees, but there is no employer cost sharing.

The valuation must take into account factors and assumptions related to, but not limited to, the following:

- NYSHIP plan provisions, which may be impacted by negotiated changes and vary by bargaining group;
- Relationship of the health care benefits provided and the eligibility criteria under which those benefits are provided;
- Census data (data on both active enrollees as well as non-active enrollees, i.e. retirees, dependent survivors, and vestees) provided to the Contractor by the Department;
- Demographic assumptions based on experience under the New York State & Local Retirement System, Police and Fire Retirement System, and the New York State Teachers’ Retirement System;
- Premium rates, provided by the Department;
- Retiree premium contributions can be reduced based on the value of the retiree’s unused sick leave credit at the time of retirement (converted to a fixed monthly credit);
- Retiree claim and enrollment data provided by the Department and the Empire Plan vendors (Note: this is detailed claim data and related enrollment data specific to non-active enrollees);

- Medicare is assumed to be the primary payor for current and future retirees and dependents age 65 and over and also for retirees and/or dependents under age 65 who are Medicare eligible due to qualifying disability;
- NYSHIP requires enrollment in Medicare Parts A and B when an individual first becomes eligible for Medicare coverage. NYSHIP reimburses enrollees for the cost of the Medicare Part B premium (excluding any penalty for late enrollment) for Medicare eligible enrollees and their Medicare eligible dependents; and
- Medicare retirees in the Empire Plan receive their prescription drug coverage through an Employer Group Waiver Plan (EGWP) and the Empire Plan provides wrap coverage.

6.4.1 Task #3 Activities Timelines/Due Dates. As described in further detail below, the Contractor shall produce, by May 31, 2019, the first annual valuations for the State, SUNY, and SUNY Construction Funds for the fiscal years as noted below. The first Valuation to be performed by the Contractor shall be as of April 1, 2018. The valuation due date is currently based on a March 31st measurement date as selected by New York State for the valuation. The valuation reporting due dates are subject to change should the reporting requirements for State, SUNY or the SUNY Construction Fund change. The Valuation shall be performed in accordance with the Contractor’s actuarial assumptions as set forth in the Contractor’s NYS/SUNY Actuarial Assumptions Report which is due not later than April 30, 2019. During the term of the Agreement, the Contractor shall perform five valuations in accordance with the schedule set forth in the table. Services for the April 1, 2022 Valuation to be delivered in the Transition Year will be billed at the year five rates in Exhibit D of the Agreement.

Report Name	Due Date	Deliverable During Contract Year
April 1, 2018 Valuation	5/31/2019	Year 2
April 1, 2019 Valuation	5/31/2020	Year 3
April 1, 2020 Valuation	5/31/2021	Year 4
April 1, 2021 Valuation	5/31/2022	Year 5
April 1, 2022 Valuation	5/31/2023	Transition Period

6.4.2 During the term of the Agreement, the Contractor shall:

6.4.2.1 Provide Task #3 related support to the Department, on an as needed basis, in areas including, but not limited to, assisting the Department in:

- (a) Responding to requests for information from DOB, SUNY and/or OSC;
- (b) Preparation for legislative testimony; and
- (c) Responding to questions on completed valuation(s) posed by auditors contracted to audit NYS' financial records.

6.4.2.2 Perform an actuarial valuation of NYS' and SUNY's OPEB on an annual basis and produce a comprehensive report by May 31 following the valuation ("Valuation Report"). The first Valuation to be performed by the Contractor under the Agreement ("2018 Valuation") shall be as of April 1, 2018 for employers' Financial Statement as follows:

Employer	Financial Statements for the year ending
NYS (excluding all of SUNY)	3/31/2020
SUNY Campus	6/30/2019
SUNY Stony Brook Hospital	6/30/2019
SUNY Brooklyn Hospital	6/30/2019
SUNY Syracuse Hospital	6/30/2019
SUNY Construction Fund	3/31/2019

The results of 2018 Valuation shall be set forth in the Contractor's 2018 Valuation Report.

6.4.2.3 The Contractor must produce a report that presents the actuarial assumptions the Contractor will use for the Valuation along with the rationale for those assumptions ("NYS/SUNY Actuarial Assumptions Report"). The NYS/SUNY Actuarial Assumptions Report associated with the 2018 Valuation is due not later than April 30, 2019.

6.4.2.4 Provide two (2) reports by April 30th following the Valuation year, that present the actuarial assumptions used for NYS' Valuation, one for distribution to PEs ("PE Actuarial Assumptions Report") and the other

to PAs (“PA Actuarial Assumptions Report”), to provide assistance in performing their GASB 75. The two reports associated with the 2018 Valuation are due no later than April 30, 2019.

6.5.0 Task #4 – Ad Hoc Consulting Services. During the term of the Agreement, the Contractor shall:

6.5.1 Be expected to provide the Department with a full range of ad hoc benefit consulting services. In its delivery of ad hoc services, the Contractor’s analysis should consider and make use of the most current employee benefit data and information in the marketplace. The Contractor shall be expected to possess and/or obtain and make available to the Department a full breadth of benefit consulting services, including such areas as:

- plan design consulting,
- provider network access analysis,
- provider network discount analysis,
- consulting on vendor procurements,
- regulatory monitoring and compliance guidance,
- risk management,
- quality care programs;
- wellness programs,
- disease management
- performance based contracting
- advanced primary care
- total cost of care modeling
- analytical support

6.5.2 As requested by the Department on a case-by-case basis, be expected to routinely analyze and prepare comprehensive cost and benefit analysis (“Ad Hoc Consulting Services Projects” or “Ad Hoc Projects”). Such Ad Hoc Projects often must be undertaken and completed within very limited timeframes; frequently within 2-3 days of the request and, on occasion, within a twenty-four (24) hour period for certain high priority tasks. The Contractor shall be required to submit final deliverable(s) required for completion of an Ad Hoc

Project within timeframes mutually agreed upon by the Department and the Contractor.

- 6.5.3 Provide a full range of benefit consulting services, including, but are not limited to:
 - 6.5.3.1 Assisting the Department with the analysis, design and/or review of solicitation instruments (e.g., requests for proposals) and their associated evaluation criteria developed by the Department for any of the benefit programs administered by the Department and/or the evaluation of specified proposals received in regard thereto;
 - 6.5.3.2 Providing the Department with analysis of federal and state legislative proposals, including advice on compliance with such legislation;
 - 6.5.3.3 In addition to those services required by Task #1 for Empire Plan Rate Renewal activities, assisting the Department with benefit and premium renewal activities for any of the other benefit programs administered by the Department;
 - 6.5.3.4 In addition to those services required by Task #3 for GASB 75 Valuation, assisting the Department with any actuarial valuations;
 - 6.5.3.5 Providing recommendations regarding proposed benefit/plan design changes;
 - 6.5.3.6 Performing cost/savings analyses of collectively bargained plan changes; and
 - 6.5.3.7 Reviewing vendors contract provisions and provide recommendations.
- 6.6.0 Ad Hoc Projects With Not-To-Exceed Total Costs. The Parties will, depending upon the breadth and scope of services sought or the nature and or duration of a given Ad Hoc task to be undertaken, either pay the Contractor for the required Ad Hoc services on a time and material basis based on the Fixed Hourly Rates as set forth in the Contractor's Cost Proposal for actual hours worked or, in instances when Fixed Hourly Rates are not available, negotiate either an Ad Hoc Project Not-To-Exceed Total Cost

or an Ad Hoc Project Total Projected Cost amount to undertake and complete each Ad Hoc Project. The negotiated amount will be based on the Contractor's proposed Ad Hoc Project work plan, as approved by the Department and the Contractor's Fixed Hourly Rates as set forth in its Cost Proposal.

ARTICLE VII: PERFORMANCE GUARANTEES

7.1.0 The Parties agree that the following guarantees and the corresponding penalties for failure to meet the guarantee shall be implemented effective January 1, 2018. The Contractor acknowledges and agrees that failure to perform a task(s) in such a manner which either meets or exceeds any and/or all of the associated Performance Guarantee(s) as set forth in Article VII of the Agreement and/or fails to make any payment(s) of any such penalties for such failure to meet any Performance Guarantee(s) does not relieve the Contractor of the performance of the activities, duties and obligations as otherwise set forth in the Agreement. Payment for failure to meet the Turnaround Guarantees shall take the form of a credit against the associated task for which payment was due.

7.1.1 Turnaround Time Guarantees – Task #1.

The Contractor guarantees to support the Department during the Premium Renewal Process, including performing the timely completion and submittal of reports and final deliverables as specified in Article VI of the Agreement. The Contractor guarantees it will adhere to the timeline included in the final work plan, provided that the required electronic data is received by the Contractor from all carriers by July 15th of each renewal cycle and the carrier renewals are received by no later than the first week in September. If the Contractor does not receive the data and/or renewals by the specified dates, different due dates shall be agreed upon in writing by the Parties and guaranteed by the Contractor. If the Contractor fails to meet this guarantee, then for each twenty-four (24) hour period, or part thereof, that a Task #1 report or final deliverable is not provided to the Department by the report(s)/deliverable(s)' due date, the Contractor shall pay the Department \$4,000 per day, until such time that the report(s)/deliverable(s) is provided to the Department. The aggregate total penalty amount shall not exceed the actual cost incurred by the Contractor in its performance of the associated Task #1 activity.

7.1.2 Turnaround Time Guarantees – Task #2.

The Contractor guarantees that Quarterly Contractor Commentary Reports will be provided in accordance with the requirements set forth in Article VI of this Agreement, no later than forty-five (45) calendar days from the end of the quarter under review, provided that the required electronic data is received by the Contractor from all carriers within fifteen (15) days of the close of the quarter, and the carrier reports within twenty-three (23) days of the close of the quarter. If the Contractor does not receive the data and/or carrier reports by the specified dates, the due date shall be extended by one day for each day the data and/or carrier reports are late. If the Contractor fails to meet this guarantee, then for each twenty-four (24) hour period, or part thereof, beyond a given Quarterly Contractor Commentary Reports' due date that the final Quarterly Contractor Commentary Reports is not provided to the Department by the Contractor, the Contractor shall pay the Department \$4,000 per day, until such time as the required final Quarterly Contractor Commentary Reports are provided to the Department. The aggregate total penalty amount shall not exceed the actual cost incurred by the Contractor in its performance of the associated Task #2 activity.

7.1.3 Turnaround Time Guarantees – Task #3.

The Contractor guarantees that GASB 75 valuation services and the five (5) required reports will be provided in accordance with the requirement set forth in Article VI of this Agreement and that other specified deliverables as requested by the Department in fulfillment of GASB obligations will be provided in accordance with due dates specified in the annual Task #3 task order negotiated by the Parties, as may be amended by the Contractor and approved by the Department. If the Contractor fails to meet this guarantee, then for each twenty-four (24) hour period, or part thereof, beyond the due date for a given Task #3 report, as specified in the annual Task #3 task order negotiated by the Parties, as may be amended by the Contractor and approved by the Department, is not provided to the Department by the Contractor, the Contractor shall pay the Department four (4) percent of the negotiated Task #3 task order Total Project Cost amount, until such time as the report(s) is/are

provided to the Department. The aggregate total penalty amount shall not exceed the actual cost incurred by the Contractor in its performance of the associated Task #3 activity.

7.1.4 Turnaround Time Guarantees – Task #4.

The Contractor guarantees that, in accordance with the requirements of Article VI of this Agreement, analysis provided for a given Ad Hoc Project will be 1) based on the most current information available, 2) comprehensive, and 3) actuarially sound and reasonable, and that an Ad Hoc Project's final deliverables will be provided to the Department not later than due date agreed upon by the Department and the Contractor. If the Contractor fails to meet this guarantee for an Ad Hoc project(s) whose Not-To-Exceed Total Cost is equal to or greater than fifty thousand dollars (\$50,000), then for each twenty-four (24) hour period, or part thereof, beyond the due date for the Ad Hoc Project's report or final deliverable as negotiated by the Parties on a case-by-case basis, that the report/deliverable is not provided to the Department by the Contractor, the Contractor shall pay the Department four (4) percent of the Task #4 Ad Hoc Not-To-Exceed Total Cost amount, until such time as the report(s)/deliverable(s) is provided to the Department. The aggregate total penalty amount shall not exceed the actual cost incurred by the Contractor in its performance of the associated Task #4 Ad Hoc project.

7.2.0 Performance penalty amounts due from the Contractor to the Department for failure to perform any task at its associated guarantee level as set forth above, and audit credit amounts, as determined pursuant to Section 27 of Appendix B, entitled "Audit Authority", shall be made at the time and in such amounts as determined by the Department to be final. Upon such determination, the Department shall notify the Contractor, in writing, and the Contractor shall apply a credit for such amounts against the next subsequent invoice(s), or if such amounts exceed subsequent invoices amounts, pay such amounts to the Department.

ARTICLE VIII: PAYMENT FOR SERVICES

8.1.0 The DCS agrees to reimburse the Contractor in accordance with Article VIII of this Agreement at the Fixed Hourly Rates as proposed by the Contractor, attached hereto

the Agreement as Exhibit D – Contractor’s Fee Schedules, subject to any not-to-exceed or total project cost amounts, as applicable, plus Department approved travel expenses and less any credits due to the Department for Contractor non-performance. Task #4 projects may also be billed at a not-to-exceed amount or total projected amount that is mutually determined by the Contractor and the Department in accordance with Section 6.6.0 of this Agreement. The Contractor shall invoice the Department, in the format required by the Department, monthly in arrears, for Project Services rendered during the preceding month. Charges for Project Services rendered shall be based on the Contractor’s Fixed Hourly Rates for actual hours worked by Contractor personnel. Said invoicing will include, as supporting detail, at a minimum the name(s) of individual(s) for whom the Department is being billed along with his/her Position Title, Fixed Hourly Rate and total hours worked by the individual(s) for the given billing. Charges for Project Services rendered by a Contractor shall be based on the Fixed Hourly Rates set forth in the Contractor’s Financial Proposal for actual hours worked by Contractor personnel with such time summarized and billed daily in fifteen (15) minute increments (e.g., 1 minute to 15 minutes = .25 of an hour; 16 minutes to 30 minutes = .50 of an hour; 31 minutes to 45 minutes = .75 of an hour and 46 minutes to 60 minutes = 1 hour) in the aggregate. For example, during February 2018, Consultant A worked on Ad Hoc Project XYZ as follows:

Friday 2/1/2018:	Duration
From 9:00 am until 10:00 am	1 hour
From 10:30 am until 11:52 am	1 hour and 22 minutes
From 1:00 pm until 1:54 pm	0 hour and 54 minutes
Total Time Worked 2/1/2018	3 hours 16 minutes
1. Total Billable Hours for 2/1/2018	3.5 Hours
Monday 2/4/2018:	Duration
From 8:00 am until 5:13 pm with and an hour lunch break	8 hours and 13 minutes
Total Time Worked 2/4/2018	8 hours and 13 minutes
2. Total Billable Hours for 2/4/2018	8.25 Hours
Thursday 2/28/2018:	Duration
From 8:00 am until 1:00 pm	5 hours
Total Time Worked 2/28/2018	5 hours

3. Total Billable Hours for 2/28/2018	5 Hours
Total Billable Hours for Consultant A for worked performed on Ad Hoc Project XYZ during February 2018	16.75 hours (i.e., the sum of 1, 2 and 3 above)

8.2.0 After the Department has approved the Contractors invoice, the Department shall process the Contractor’s invoice to OSC for payment. OSC shall render payment for invoices under the Agreement in accordance with ordinary State procedures and practices. The Contractor shall certify the accuracy of all Contractor invoices prior to their submission to the Department and the Department will make best efforts to process all acceptable invoices within thirty (30) days of their receipt; however, failure to make payment within said timeframe shall not be considered a breach of contract. Timeliness of payment and any interest to be paid to 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 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.

8.3.0 The Contractor warrants that all of the prices, terms, warranties and benefits granted by the Contractor herein are comparable to or better than the equivalent terms being provided by the Contractor to other public sector customers under like or similar circumstances, including scope and volume of services including but not limited to the complexity of services, and length of engagement (“Superior Pricing”). If, during the course of this Agreement, the Contractor enters into arrangements with any other public sector customers with whom in the opinion of DCS said customer(s) are provided Superior Pricing, DCS must provide written notice regarding an adjustment to the pricing to become effective prospectively.

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

ARTICLE IX: RECORDS AND INFORMATION TO BE FURNISHED

9.1.0 The Department and the Empire Plan Vendors shall furnish to the Contractor all information which the Contractor may reasonably require with regard to any matters pertaining to the delivery of Project Services under this Agreement.

ARTICLE X: MODIFICATION OF PROJECT SERVICES

- 10.1.0 In the event that laws or regulations enacted by the Federal Government and/or the State of New York have an impact upon the conduct of this Agreement in such a manner that the Department determines that any design elements or requirements of the Agreement must be revised, the Department shall notify the Contractor of any such revisions and shall provide the Contractor with a reasonable time within which to implement such revisions.
- 10.2.0 In the event that the State and the unions representing State Employees enter into collective bargaining agreements, or the State otherwise require changes in Program design elements or requirements of the Agreement, the Department shall notify the Contractor of such changes and shall provide the Contractor with reasonable notice to implement such changes.
- 10.3.0 To the extent that any of the events as set forth in this Article X of this Agreement shall take place and constitute a material and substantial change in the delivery of Services that are contemplated in accordance with the terms of the Program as of the Effective Date and which the Contractor is required to perform or deliver under the Agreement, either Party may submit a written request to initiate review of the fee(s) received by the Contractor for Services provided and guarantees made by the Contractor under the terms of the Agreement, accompanied by appropriate documentation. The Department reserves the right to request, and the Contractor shall agree to provide additional information and documentation the Department deems necessary to verify that a modification of the fees or guarantees is warranted. The Department will agree to modify the fee(s) to the extent necessary to compensate the Contractor for documented additional costs determined by the Department to be reasonable and necessary. The Contractor will agree to modify the fee (s) to the extent necessary to relieve the Department of the obligation to pay for Project services that are no longer required. The Department will agree to modify guarantees as determined by the Department to be necessary to reflect Actuarial and Benefits Management Consulting Services modifications. Should the Parties agree to modify the fee(s) and/or guarantees, such approval shall be subject to written amendment and approval by OSC and the AG. The Contractor shall implement changes as required by the Department with or without final resolution of any fee proposal.

10.4.0 During the term of a given Task #1 project, Task #2 project, Task #3 task order or Task #4 Ad Hoc Project (“Activity”), should an event(s), outside the control of the Contractor occur that result(s) in a material or substantial change in the effort required of the Contractor to complete the Activity, but not its scope, the Contractor may submit a written request to the Department requesting an increase to the Total Projected Cost or the Not-To-Exceed Total Cost amount of the Activity, as applicable, accompanied by appropriate written documentation as may be required by the Department . The Department reserves the right to review such written request(s) within a reasonable period of time and, in its sole discretion, make a written determination as to whether the written request shall be approved or rejected. Should the Department approve the Contractor’s written request, the Contractor agrees that the Department is not obligated to reimburse the Contractor for costs incurred in excess of the Activity’s Total Project Cost or Total Not-To-Exceed Total Cost amount, as modified by the Department approved written request(s). The written request, if approved by the Department, shall not constitute a formal written amendment to the Agreement and the approved written request shall not be subject to the approval of the OSC.

ARTICLE XI: USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION

11.1.0 For purposes of this Article, the term “Protected Health Information” (“PHI”) means any information, including demographic information collected from an individual, that relates to the past, present, or future physical or mental health or condition of an individual, to the provision of health care to an individual, or to the past, present, or future payment for the provision of health care to an individual, that identifies the individual, or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual. Within the context of this Agreement, PHI may be received by the Contractor from the Department or may be created or received by the Contractor on behalf of the Department in the Contractor’s capacity as a business associate. All PHI received or created by the Contractor in Contractor’s capacity as a business associate and as a consequence of its performance under this Agreement is referred to herein collectively as “Department’s PHI.”

11.2.0 The Contractor acknowledges that the Department administers on behalf of New York State several group health plans as that term is defined in HIPAA’s implementing regulations at 45 CFR Parts 160 and 164, and that each of those group health plans

consequently is a “covered entity” under HIPAA. These group health plans include NYSHIP, which encompasses the Empire Plan as well as participating health maintenance organizations; the Dental Plan, and the Vision Plan. In this capacity, the Department is responsible for the administration of these “covered entities” under HIPAA. The Contractor further acknowledges that the Department has designated NYSHIP and the Empire Plan as an Organized Health Care Arrangement (OHCA). The Contractor further acknowledges that the Contractor is a HIPAA “business associate” of the group health plans identified herein as “covered entities” as a consequence of the Contractor’s provision of certain services to and/or on behalf of the Department as administrator of the “covered entities” within the context of the Contractor’s performance under this Agreement, and that the Contractor’s provision of such services may involve the disclosure to the Contractor of individually identifiable health information from the Department or from other parties on behalf of the Department, and also may involve the Contractor’s disclosure to the Department of individually identifiable health information as a consequence of the Services performed under this Agreement. To the extent Contractor acts as a HIPAA “business associate” of the group health plans identified as “covered entities” in this Article XI, Contractor shall adhere to the requirements as set forth in this Article XI of this Agreement.

11.3.0 Permitted Uses and Disclosures of the Department’s PHI: The Contractor may create, receive, maintain, access, transmit, use and/or disclose the Department’s PHI solely in accordance with the terms of this Agreement. In addition, the Contractor may use the Department’s PHI to provide data aggregation services relating to the health care operations of the Department. Further, the Contractor may use and disclose the Department’s PHI for the proper management and administration of the Contractor if such use is necessary for the Contractor’s proper management and administration or to carry out the Contractor’s legal responsibilities, or if such disclosure is required by law or the Contractor obtains reasonable assurances from the person to whom the information is disclosed that it shall be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Contractor or any instances of which it is aware in which the confidentiality of the information has been breached.

11.4.0 Nondisclosure of the Department’s PHI: The Contractor shall not create, receive, maintain, access, transmit, use or further disclose the Department’s PHI otherwise

than as permitted or required by this Agreement or as otherwise required by law. The Contractor shall limit its uses and disclosures of PHI when practicable to the information comprising a Limited Data Set, and in all other cases to the minimum necessary to accomplish the intended purpose of the PHI's access, use, or disclosure.

11.5.0 **Safeguards:** The Contractor shall use appropriate, documented safeguards to prevent the use or disclosure of the Department's PHI otherwise than as provided for by this Agreement. The Contractor shall maintain a comprehensive written information security program that includes administrative, technical, and physical safeguards that satisfy the standards set forth in the HIPAA Security Rule at 45 C.F.R. §§164.308, 164.310, and 164.312, along with corresponding policies and procedures, as required by 45 C.F.R. § 164.316, appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities, to reasonably and appropriately protect the confidentiality, integrity and availability of any electronic PHI that it creates, receives, maintains, accesses or that it transmits on behalf of the Department pursuant to this Agreement to the same extent that such electronic PHI would have to be safeguarded if created, received, maintained, accessed or transmitted by a group health plan identified herein.

11.6.0 **Breach Notification:**

11.6.1 **Reporting:** The Contractor shall report to the Department any breach of unsecured PHI, including any use or disclosure of the Department's PHI otherwise than as provided for by this Agreement, of which the Contractor becomes aware. An acquisition, access, transmission, use or disclosure of the Department's PHI that is unsecured in a manner not permitted by HIPAA or this Agreement is presumed to be a breach unless the Contractor demonstrates that there is a low probability that the Department's PHI has been compromised based on the Contractor's risk assessment of at least the following factors: (i) the nature and extent of the Department's PHI involved, including the types of identifiers and the likelihood of re-identification; (ii) the unauthorized person who used the Department's PHI or to whom the disclosure was made; (iii) whether the Department's PHI was actually acquired or viewed; and (iv) the extent to which the risk to the Department's PHI has been mitigated. Further, the Contractor shall report to the Department any security incident of which it

becomes aware. "Security incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information, or interference with system operations in an information system. The Contractor shall notify the Department within five (5) Business Days of the date the Contractor becomes aware of the event.

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

11.6.2a the date of the breach incident;

11.6.2b the date of the discovery of the breach;

11.6.2c a brief description of what happened;

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

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

11.6.2f a brief description of what the Contractor is doing to investigate the breach, to mitigate harm to individuals and to protect against any further breaches; and

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

11.6.3 The Department will be responsible to provide notification to individuals whose unsecured PHI has been or is reasonably believed to have been accessed, acquired or disclosed as a result of a breach, as well as the Secretary of the U.S.

Department of Health and Human Services and the media, as required by 45 CFR Part 164.

- 11.6.4 The Contractor shall maintain procedures to sufficiently investigate the breach, mitigate losses, and protect against any future breaches, and to provide a description of these procedures and the specific findings of the investigation to the Department upon request.
- 11.6.5 For purposes of this Agreement, "Unsuccessful Security Incidents" include activity such as pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service, and any combination of the above, so long as no such incident results in unauthorized access, use, or disclosure of electronic PHI.
- 11.6.6 The Contractor shall mitigate, to the extent practicable, any harmful effects from any use or disclosure of PHI by the Contractor not permitted by this Agreement.
- 11.7.0 **Associate's Agents:** The Contractor shall require all of its agents or Key Subcontractors to whom it provides the Department's PHI, whether received from the Department or created or received by the Contractor on behalf of the Department, to agree, by way of written contract or other written arrangement, to the same restrictions and conditions on the access, use, and disclosure of PHI that apply to the Contractor with respect to the Department's PHI under this Agreement.
- 11.8.0 **Availability of Information to the Department:** The Contractor shall make available to the Department such information and documentation as the Department may require regarding any disclosures of PHI by the Contractor to fulfill the Department's obligations to provide access to, provide a copy of, and to account for disclosures of the Department's PHI in accordance with HIPAA and its implementing regulations. The Contractor shall provide such information and documentation within a reasonable amount of time of its receipt of the request from the Department. The Contractor must provide the Department with access to the Department's PHI in the form and format requested, if it is readily producible in such form and format; or if not, in a readable hard copy form or such other form and format as agreed to by the Parties, provided, however, that if the Department's PHI that is the subject of the request for access is

maintained in one or more designated record sets electronically and if requested by the Department, the Contractor must provide the Department with access to the requested PHI in a readable electronic form and format.

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

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

11.11.0 **Termination**

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

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

11.12.0 **Indemnification:** The Contractor agrees to indemnify, defend and hold harmless the State and the Department and its respective employees, officers, agents or other members of its workforce (each of the foregoing hereinafter referred to as “Indemnified Party”) against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this Agreement or from any acts or omissions related to this Agreement by the Contractor or its employees, officers, subcontractors, agents or other members of its workforce, without limitations. Accordingly, the Contractor shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorneys’ fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results from the Contractor’s acts or omissions hereunder. The Contractor’s obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement.

11.13.0 **Miscellaneous:**

11.13.1 **Amendments:** This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in writing duly signed by authorized representatives of the Parties and approved by the NYS AG and OSC. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary to achieve and maintain compliance with the requirements of HIPAA and its implementing regulations

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

11.13.3 **Regulatory References:** Any reference herein to a federal regulatory section within the Code of Federal Regulations shall be a reference to such section as it may be subsequently updated, amended or modified, as of their respective compliance dates.

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

ARTICLE XII: NOTICE TO STATE

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

ARTICLE XIII: GENERAL PROVISION AS TO REMEDIES

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

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

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

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

ARTICLE XIV: AUDIT AUTHORITY

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

- 14.1.0 The Contractor acknowledges that the Department has the authority to conduct financial and performance audits of the Contractor's delivery of Project Services in accordance with the Agreement and any applicable State and federal statutory and regulatory authorities.
- 14.2.0 The Contractor shall maintain and make available documentary evidence necessary to perform such reviews. Documentation maintained and made available by the Contractor may include, but is not limited to, source documents, books of account, subsidiary records and supporting work papers, claim documentation, pertinent contracts, key subcontracts, and correspondence.
- 14.3.0 The Contractor shall make available for audit all data in its computerized files that is relevant to and subject to the Agreement. Such data may, at the Department's discretion, be submitted to the Department in machine-readable format, or the data may be extracted by the Department, or by the Contractor under the direction of the Department.
- 14.4.0 The Contractor shall, at the Department's request, search its files, retrieve information and records, and provide to the auditors such documentary evidence as they require. The Contractor shall make sufficient resources available for the efficient performance of audit procedures.
- 14.5.0 The Contractor shall comment on the contents of any audit report prepared by the Department and transmit such comments in writing to the Department within 30 Days of receiving any audit report. The response will specifically address each audit recommendation. If the Contractor agrees with the recommendation, the response will include a work plan and timetable to implement the recommendation. If the Contractor disagrees with an audit recommendation, the response will give all details and reasons for such disagreement. Resolution of any disagreement as to the resolution of an audit recommendation shall be subject to the dispute resolution procedures set forth in Appendix B of this Agreement.
- 14.6.0 If the Contractor has an independent audit performed of the records relating to this Agreement, a certified copy of the audit report shall be provided to the Department within ten (10) Days after receipt of such audit report by the Contractor.

14.7.0 The audit provisions contained herein shall in no way be construed to limit the audit authority or audit scope of the Office of the NYS Comptroller as set forth in either Appendix A of this Agreement, Standard Clauses for All New York State Contracts, or Appendix B, Standard Clauses for All Department Contracts.

ARTICLE XV: WARRANTIES

15.1.0 Where the Contractor generally offers additional or more advantageous warranties than set forth below, the Contractor shall offer or pass through any such warranties to the State. A breach of any provision of this Article XV shall be deemed a “material breach” for purposes of default under the Agreement. The Contractor hereby warrants and represents:

15.1.1 Representations and Warranties. That Contractor assumes responsibility for the cost and timely accomplishment of all obligations and duties required by the Agreement whether or not the Contractor, or subcontractors, performs such obligations or duties. Project Services rendered by the Contractor shall be performed in accordance with all the terms and conditions, covenants, statements and representations contained in the Agreement, including all appendices.

15.1.2 Workmanship Warranty. That during the term of the Agreement, Contractor will provide the necessary levels of qualified personnel to ensure proper performance by Contractor of its obligations and responsibilities under the Agreement. The Contractor warrants that it performs Project Services using a professional and workmanlike manner, in accordance with highest applicable industry standards. For purposes of this Agreement, “highest applicable industry standards” shall be defined as the degree of care, skill, efficiency, and diligence that a prudent person possessing expertise in the subject area and acting in a like capacity would exercise in similar circumstances.

15.1.3 Contractor Compliance. To pay, at its sole expense, all applicable permits, licenses, tariffs, tolls and fees and give all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Agreement. Prior to award and

during the Agreement term and any extension thereof, Contractor shall establish to the satisfaction of the Department that it meets or exceeds all requirements of the Agreement and any applicable laws, including but not limited to, permits, insurance coverage, licensing, proof of coverage for workman's compensation, and shall provide such proof as required by the Department. Failure to do so may constitute grounds for the Department to cancel or suspend the Agreement, in whole or in part, or to take any other action deemed necessary by the Department.

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

ARTICLE XVI: REPORTS OWNERSHIP & ERROR CORRECTIONS

16.1.0 In addition to ownership provisions set forth elsewhere in Appendices A and B, the Contractor agrees that information and documents developed pursuant to the Agreement are the property of the State of New York and that the Contractor will not discuss such information, documents and systems with a third party without the express written authorization of the Department, other than as required by court order, law, rule or regulation.

16.2.0 The Contractor shall correct any and all errors in any reports, materials and/or documents provided or prepared by the Contractor pursuant to this Agreement provided the Department notifies the Contractor of such errors and, if required, furnishes to the Contractor data and information the Department may be required to provide in order for the Contractor to make such corrections after delivery of any such report, material, document or service. This Contractor requirement shall survive the expiration or termination of the Agreement. In regard to corrections required due solely to an error made by the Contractor, the Contractor will correct such errors at no cost to the Department. The correction of errors which are caused by the Department or the State of New York or another third party under contract to the State will be subject to reimbursement by the Department through the issuance of an *Error Correction Change Order* negotiated between the Parties; the pricing of which shall be based on the Contractor's Fixed Hourly Rates. The actual costs incurred under the *Error Correction Change Order* will not apply to the task's original not-to-exceed amount, however, Task #1, #2, and #4 (if applicable) *Error Correction Change Orders*

shall be subject to not-to-exceed payment amounts. The scope of such *Error Correction Change Orders* shall be limited to the correction of errors and the *Error Correction Change Order* shall not be subject to the prior approval of OSC before becoming effective.

ARTICLE XVII: TERMINATION

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

- 17.1.0 The State retains the right to cancel this Agreement without cause and in its sole discretion, provided that the Department shall give written notice to the Contractor not less than 30 Days prior to the date upon which termination shall become effective, such notice to be made via registered or certified mail, return receipt requested or hand delivered. The date of such notice shall be deemed to be the date of postmark in the case of mail or the date of hand delivery. This provision should not be understood as waiving the State's right to terminate the Agreement for cause or to stop work immediately for unsatisfactory work, but is supplementary to that provision.
- 17.2.0 If the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, the State, in its sole discretion, may terminate this Agreement for cause or may exercise such other remedies as shall be available under this Agreement, at law and/or equity;
- 17.3.0 No delay or omission to exercise any right, power or remedy accruing to the State or the Department upon breach or default by the Contractor under the Agreement shall impair any such right, power or remedy, or shall be construed as a waiver of any such breach or default, or any similar breach or default thereafter occurring, nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing;
- 17.4.0 In the event of the Contractor's default, in addition to availing itself of specific remedies set forth in the Agreement, the State may pursue all legal and equitable remedies for

breach. In addition to pursuing any other legal or equitable remedies, the State shall have the right to take one or more of the following actions:

17.4.1 terminate the Agreement in whole or in part;

17.4.2 suspend, in whole or in part, payments due Contractor under the Agreement;
and

17.4.3 pursue equitable remedies to compel Contractor to perform.

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

17.5.0 For Violation of Procurement Lobbying Law: The Department reserves the right to terminate the Agreement in the event it is determined by the Department in its sole discretion that the certification filed by the Contractor in accordance with §139-j and/or §139-k of the New York State Finance Law was intentionally false or intentionally incomplete. Upon such finding, the Department may, at its sole option, exercise its termination right by providing ten (10) days written notification to the Contractor, or providing notice in accordance with other written notification terms in the Agreement;

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

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

17.8.0 Mitigation of Costs. The Contractor shall not undertake any additional or new contractual obligations on or after the date of return receipt notice without the prior written approval of the State. On or after the date of return receipt notice and during the termination notice period, the Contractor shall take all commercially reasonable and prudent actions to close out unnecessary outstanding, existing obligations as economically as possible for the State.

ARTICLE XVIII: TRANSITION

18.1.0 The State may require the Contractor to provide uninterrupted Project Services after Agreement termination/expiration as the State deems reasonable and necessary and/or as necessary for the State to comply with all legal requirements for establishing a new contract to continue the provision of Project Services (“Transition Period”). Transition Services, as defined below, shall be governed as follows:

18.1.1 Transition Period: The transition period shall be determined by the State, and Contractor will be notified of the period in writing. The State shall consult with the Contractor prior to making such determination. The State reserves the right to subsequently amend the transition period upon 30 Days advance written notice to the Contractor.

18.1.2 Transition Plan: The Contractor must, 90 Days prior to the end of this Agreement, or if this Agreement is terminated prior to the end of its term, within 15 Days of receipt of notification of termination, provide the Department with a detailed written plan for transition which outlines, at a minimum, the tasks, milestones, and deliverables associated with Program transition. The Contractor agrees to amend the Transition Plan to include all other information deemed necessary by the State.

18.1.3 Transition Services: shall be deemed to include Contractor’s responsibility for all tasks and Services outlined in the Contract, and for transferring in a planned manner specified in the Transition Plan all tasks and Services to the State, a third party or the successor contractor. It is expressly agreed between the Parties that the level of service during the transition period shall be maintained in accordance with and shall be subject to all the terms and conditions of the Contract, provided, however, that where, during the transition period, tasks or Services are transitioned to or assumed by the State, a third party or the successor contractor, Contractor shall not be held responsible for the negligent acts or negligent omissions of the State, a third party or the successor contractor or for service degradation resulting from the negligent acts or negligent omissions of the State, a third party or the successor contractor. The transition period shall be determined by the State, and

Contractor will be notified of the period in writing. The State shall consult with the Contractor prior to making such determination. The State reserves the right to subsequently amend the transition period upon 30 Days advance written notice to the Contractor.

- 18.1.4 No Interruption in Service: At all times during the transition period and unless directed otherwise in writing by the State, the Contractor shall continue all contractual obligations set forth in the Agreement until such time as the State (i) has approved the Contractor's proposed Transition Plan, and (ii) an orderly transition to the State, a third party, or the successor Contractor has been completed pursuant to the approved Transition Plan. The Contractor shall be required to meet its contractual obligations pursuant to this paragraph notwithstanding the issuance of a termination for cause or convenience by the State.
- 18.1.5 State Responsibilities for Transition: The State shall assume responsibility for Transition program management. A Program manager responsible for coordinating Transition activities, maintaining the transition task schedule, and approving transition deliverables shall be appointed.
- 18.1.6 Compensation for Transition Services: Contractor shall be reimbursed for transition services performed during the transition period at the year five rates in Exhibit D.

ARTICLE XIX: CONTRACTOR QUALIFICATIONS AND KEY PERSONNEL

- 19.1.0 The Contractor warrants that all employees, subcontractors or agents performing work under the Agreement shall meet or exceed the technical or other qualifications set forth in the Agreement. Contractor acknowledges that the skill and experience of Contractor personnel proposed to be assigned to the scope of work set forth in the Agreement is a material element in executing the Agreement. Therefore, in order to ensure timely and cohesive completion of the services, both Parties intend that key personnel initially assigned to the scope of work will continue through work completion. Key personnel will be identified in writing.

- 19.2.0 Once an individual designated as key personnel has been approved by NYS and assigned to provide services under the Agreement, such individual will not thereafter, absent written approval by the Department, be removed by Contractor, or reassigned by Contractor to other duties involving comparable employment by Contractor while the services are in progress and for so long as there has been no voluntary suspension of services due to force majeure lasting for a period of longer than ten (10) Business Days.
- 19.3.0 Circumstances may arise, however, which necessitate personnel to be substituted during the provision of services due to delays in awarding the contract, suspensions for force majeure, or lack of funding, or other such State causes, or due to promotions, termination, sickness, vacation or other similar material change in the employment circumstance of the employee, at which time a replacement of comparable background and experience may be substituted by the Contractor, subject to approval of NYS.
- 19.4.0 The State may refuse access to or require replacement of any individual if such individual renders, in the sole judgment of NYS, inadequate or unacceptable performance of services, or for any other reason NYS finds such individual does not meet its security or responsibility requirements of NYS.

ARTICLE XX: SECURITY RESPONSIBILITIES AND FEDERAL OR STATE DISCLOSURE PROHIBITIONS

20.1.0 The Contractor shall maintain the security, nondisclosure and confidentiality of all information in accordance with the following clauses in performance of its activities under the Agreement. Contractor shall ensure that its personnel, agents, officers and subcontractors, if any are fully aware of the obligations arising under this section and shall take all commercially reasonable steps to ensure compliance. The Agreement may be terminated for cause by the Department for a material breach of this Article XX.

20.1.1 Security Responsibilities:

Contractor warrants, covenants and represents that it shall comply fully with all security procedures and policies of NYS, which procedures and policies are communicated to the Contractor by the Department during the performance of the Agreement, including but not limited to Article XI of this Agreement and

Department's Information Security Standards (Appendix C-1). Contractor shall hold NYS harmless from any loss or damage to NYS resulting from the violation by the Contractor, its officers, agents, employees, and subcontractors, if any of such security procedures or policies resulting from any criminal acts committed by such officers, agents, employees, and subcontractors, while performing services under the Agreement.

20.1.2 Federal or State Disclosure Prohibitions:

In the event that it becomes necessary for Contractor to receive Confidential Information, which Federal or State statute or regulation prohibits from disclosure, Contractor hereby agrees to return or destroy all such Confidential Information that has been received from NYS when the purpose that necessitated its receipt by Contractor has been completed. In addition, Contractor agrees not to retain any Confidential Information which Federal or State statute or regulation prohibits from disclosure after termination of the Agreement.

Notwithstanding the foregoing, if the return or destruction of the Confidential Information is not feasible, Contractor agrees to extend the protections of the Agreement for as long as necessary to protect the Confidential Information and to limit any further use or disclosure of that Confidential Information. If Contractor elects to destroy Confidential Information, it shall use reasonable efforts to achieve the same and notify NYS accordingly. Contractor agrees that it will 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. The State may terminate the Agreement if it determines that Contractor has violated a material term of this Article XX. The terms of this Article XX shall apply equally to Contractor, its agents and subcontractors, if any. Contractor agrees that all subcontractors, if any and agents shall be made aware of and shall agree to the terms of this Article XX.

ARTICLE XXI: DEPARTMENT ACCEPTANCE OF DELIVERABLES

21.1.0 Each final deliverable prepared by the Contractor associated with a given task is subject to Department review and acceptance. The Department will evaluate each final deliverable submitted by the Contractor for conformity and compliance to its stated scope, functionality or purpose. The Department shall have the right to accept or reject each final deliverable. If the Department rejects a final deliverable, the Department's Contract Manager will so notify the Contractor within five (5) Business Days of the Department's receipt of the final deliverable and forward its comments to the Contractor outlining deficiencies noted. At the Department's sole discretion, the Contractor will be provided with an opportunity to correct the deficiencies cited by the Department, and resubmit the final deliverable for Department acceptance within a timeframe established by the Department. Any resubmission of a rejected final deliverable shall include responses to all Department comments, in addition to corrections for the noted deficiencies. Resubmitted final deliverables will likewise be subject to Department acceptance or rejection. The Department will evaluate each correction made by the Contractor and either accept or reject the resubmitted final deliverable. If the Department rejects a resubmitted final deliverable, the Department will so notify the Contractor within five (5) Business Days of the Department's receipt of the resubmitted final deliverable and forward its comments to the Contractor outlining deficiencies noted. The Department may provide verbal comments to the Contractor, during, and in addition to, the formal deliverable review process described above. If the Contractor does not receive Department approval of a final deliverable or resubmitted final deliverable, if applicable, the Contractor will return any monies paid associated with the task for which the deliverable was prepared. If the Department does not notify the Contractor within five (5) Business Days of its acceptance or rejection of a final deliverable or resubmitted final deliverable, if applicable, then the final deliverable or resubmitted deliverable, if applicable shall be deemed to have been accepted by the Department.

ARTICLE XXII: NOTICES

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

- (a) via certified or registered United States mail, return receipt requested;

- (b) by facsimile transmission;
- (c) by personal delivery;
- (d) by expedited delivery service; or
- (e) by e-mail.

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

State of New York Department of Civil Service

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

Aon Consulting Inc.

Name: Kenneth J. McCabe
Title: Senior Vice President
Address: 199 Water Street
New York, NY 10038
Telephone Number: 212-441-2080
Facsimile Number: 312-381-0745
E-Mail Address: Ken.McCabe@AonHewitt.com

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

ARTICLE XXIII: DATA SHARING AND OWNERSHIP

23.1.0 All claims and other data related to the Program is the property of the State. If such data is provided to the contractor it is solely for the purposes of allowing the Contractor to fulfill its duties and responsibilities under the Agreement and said materials are the sole property of the NYS. Except as directed by a court of competent jurisdiction, or as necessary to comply with applicable New York State or federal law, the Contractor shall not share, sell, release, or make the materials available to third parties in any manner without the prior consent of the Department. This provision shall survive the expiration or termination of the Agreement.

23.2.0 Within thirty (30) days after the termination or expiration of the Agreement for any reason, the Contractor agrees to return to the Department all data provided to the Contractor by the Department or a third party under contract with Department or, if return is not feasible, destroy any and all such data. In the event returning or destroying such data is not feasible, the Contractor shall provide written notification to the Department of the conditions that make the return or destruction not feasible, in which case, the Contractor must continue to protect such data in perpetuity.

ARTICLE XXIV: MERGERS/ACQUISITIONS

24.1.0 The Contractor's obligations to perform under the Agreement shall not be affected or impaired by any reorganization, consolidation or merger to which the Contractor is, or may become, a party. In any such event, the Contractor shall continue to be bound by, and shall perform under, all terms and conditions set forth herein.

ARTICLE XXV: IRAN DIVESTMENT ACT

25.1.0 As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) was charged with the responsibility to develop a list (Prohibited Entities List) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list was posted to the OGS website on August 10, 2012.

25.2.0 By entering into this Agreement, the Contractor (or any assignee) certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/Offerors Pursuant to The New York State Iran Divestment Act of 2012" list (Prohibited Entities List) posted on the OGS website at <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on the Agreement any subcontractor that is identified on the Prohibited Entities List. The Contractor agrees that after should it seek to renew or extend the Agreement, it must provide the same certification at the time the Agreement is renewed or extended. The Contractor also agrees that any proposed Assignee of the Agreement will be required to certify that it is not on the Prohibited Entities List before the Department may approve a request for Assignment of the Agreement.

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

25.4.0 The Department reserves the right to reject any request for renewal, extension, or assignment for an entity that appears on the Prohibited Entities List prior to the renewal, extension or assignment of the Agreement, and pursue a responsibility review with the Contractor should it appear on the Prohibited Entities List hereafter.

ARTICLE XXVI: VENDOR RESPONSIBILITY

26.1.0 The Contractor is required to provide the Department with an updated Vendor Responsibility Questionnaire when requested to do so by the Department throughout the term of the Agreement. Regardless, the Contractor is required to report to the Department any material changes in the information reported in its initial Vendor Responsibility Questionnaire..

26.2.0 The Contractor shall at all times during the Agreement term remain responsible. The Contractor agrees, if requested by the Commissioner or his or her designee, to present

evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

26.3.0 Suspension of Work (for Non-Responsibility): The Commissioner or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when he or she discovers information that call into question the responsibility of the Contractor. In the event of such suspension, the Contractor must comply with the terms of the suspension order. Agreement activity may resume at such time as the Commissioner or his or her designee issues a written notice authorizing a resumption of performance under the Agreement.

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

ARTICLE XXVII: ALL LEGAL PROVISIONS DEEMED INCLUDED

27.1.0 It is the intent and understanding of the Parties to the Agreement that each and every provision of law required to be inserted in the Agreement shall be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then the Agreement shall forthwith upon the application of either Party be amended by such insertion so as to comply strictly with the law without prejudice to the rights of either Party hereunder.

ARTICLE XXVIII: ENTIRE AGREEMENT

28.1.0 The Agreement and the appendices, exhibits and attachments hereto constitute the entire agreement between the Parties hereto and no statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. The Agreement shall not be changed, modified, or altered in any manner except by an instrument in writing executed by the Parties hereto.

ARTICLE XXIX: Appendix B Changes:

29.1.0 Section 10 of Appendix B is hereby deleted and replaced with a new Section 10 as follows:

“10. INDEMNIFICATION

The Contractor shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify, defend and save harmless the Department, the State, its officers, agents and employees, from any and all suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional or negligent act or omission of the Contractor, its agents, employees, partners or sub-contractors in performance of the Agreement, without limitation; provided, however, that the Contractor shall not indemnify or be liable for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the Department and/or State.

The Contractor shall fully indemnify, defend and save harmless the Department, the State, its officers, agents and employees, without limitation, from any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs which may be fully assessed against the Department and/or 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, arising out of the publication, translation, reproduction, delivery, performance, use, or disposition of any material, information or data furnished under the Agreement, or based on any libelous or otherwise unlawful matter contained in such material, information or data, except as otherwise provided in the Article entitled "Patent Copyright or Proprietary Rights Infringement" of this Appendix B.

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

For all claims against the Contractor where liability is not otherwise set forth in the Agreement as being “without limitation,” and regardless of the basis on which the claim

is made, Contractor's liability under the Agreement for direct damages shall not exceed \$2,500,000 in the aggregate.

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

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

29.2.0 Section 11 of Appendix B is hereby amended to add the following provision:

"Notwithstanding anything to the contrary in this Agreement, Contractor shall not be required to defend or indemnify the Department to the extent a claim of misappropriation or infringement arises from software, equipment, materials and/or information provided or made available by the Department."

29.3.0 Section 16 of Appendix B is hereby amended to add the following provision:

"Contractor has intellectual property rights in existing technology, and may, in connection with the performance of Services hereunder, utilize this existing technology, including various concepts, ideas, methods, methodologies, procedures, processes, know-how, and techniques, data, documentation, and proprietary information and processes ("Existing Contractor Technology"), to perform the Services for DCS hereunder. To the extent that any Existing Contractor Technology is contained in any of the Products, Contractor hereby grants to DCS a perpetual, worldwide, paid-up, royalty-free, nonexclusive license to use such Existing Contractor Technology solely for DCS's use in connection with the Products."

29.4.0 Section 20 of Appendix B is hereby amended to add the following provision:

"This Agreement is subject to OFAC compliance (i.e., the laws and regulations enforced by the United States Office of Foreign Assets Control.)"

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

(REMAINDER OF PAGE LEFT INTENTIONALLY BLANK)

Contractor: Aon Consulting, Inc.

Contract Number: C000692

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

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

Date: 5/2/18

By: 

Name: Rebecca Corso

Title: Deputy Com of Operations

Aon Consulting, Inc.

Date: 4-27-18

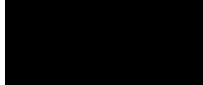
By: 

Name: Matt Mann

Title: COO – U.S. Health & Benefits

**STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)**

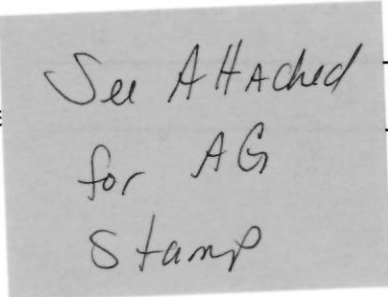
On the 27 day of APRIL, 2018, before me personally came MATT MANN, to me known, and known to me to be the person who executed the above instrument, who, being duly sworn by me, did for her/himself depose and say that (s)he is the COO-U.S. HEALTH+BENEFITS of AON CONSULTING, INC. the corporation or organization described in and which executed the above instrument; and that (s)he signed his/her name thereto.



NOTARY PUBLIC

My commission expires: 10-19-21



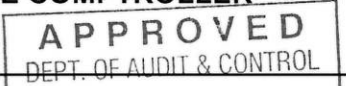
**Approved as to form:
ATTORNEY GENERAL**

By:  _____

Date: _____

Approved:

STATE COMPTROLLER

By:  _____

Date: _____



Task #1 – Premium Rate Renewals and Plan Funding Requirements

Period	1/1/2018 – 12/31/2018 (Year 1)			1/1/2019 – 12/31/2019 (Year 2)			1/1/2020 – 12/31/2020 (Year 3)		
	Fixed Hourly Rate	# Hours	Total Projected Cost	Fixed Hourly Rate	# Hours	Total Projected Cost	Fixed Hourly Rate	# Hours	Total Projected Cost
Principal									
Lead Consultant									
Consultant									
Analyst									
Not-To-Exceed Total Cost									

Period	1/1/2021 – 12/31/2021 (Year 4)			1/1/2022 – 12/31/2022 (Year 5)			Task #1 Five Year Total
	Fixed Hourly Rate	# Hours	Total Projected Cost	Fixed Hourly Rate	# Hours	Total Projected Cost	(=Sum of Years 1 – 5 Not-To-Exceed Total Cost amounts)
Principal							
Lead Consultant							
Consultant							
Analyst							
Not-To-Exceed Total Cost							

Task #2 – Quarterly Analysis

Year 1 (1/1/2018 – 12/31/2018)	1st Quarter 2018 (Due 05/2018)			4th Quarter 2018 (Due 02/2019)			Year 1 Totals ⁽¹⁾
	Fixed Hourly Rate	# Hours	Total Projected Costs	Fixed Hourly Rate	# Hours	Total Projected Cost	
Position Title							
Principal							
Lead Consultant							
Consultant							
Analyst							
Not-To-Exceed Total Cost							

⁽¹⁾ = Sum of 1st and 4th Quarter Not-To-Exceed Total Cost amounts.

Year 2 (1/1/2019 – 12/31/2019)	1st Quarter 2019 (Due 05/2019)			4th Quarter 2019 (Due 02/2020)			Year 2 Totals ⁽¹⁾
	Fixed Hourly Rate	# Hours	Total Projected Costs	Fixed Hourly Rate	# Hours	Total Projected Cost	
Position Title							
Principal							
Lead Consultant							
Consultant							
Analyst							
Not-To-Exceed Total Cost							

⁽¹⁾ = Sum of 1st and 4th Quarter Not-To-Exceed Total Cost amounts.

Year 3 (1/1/2020 – 12/31/2020)	1st Quarter 2020 (Due 05/2020)			4th Quarter 2020 (Due 02/2021)			Year 3 Totals ⁽¹⁾
	Fixed Hourly Rate	# Hours	Total Projected Costs	Fixed Hourly Rate	# Hours	Total Projected Cost	
Position Title							
Principal							
Lead Consultant							
Consultant							
Analyst							
Not-To-Exceed Total Cost							

⁽¹⁾ = Sum of 1st and 4th Quarter Not-To-Exceed Total Cost amounts.

Task #2 – Quarterly Analysis

Year 4 (1/1/2021 – 12/31/2021)	1st Quarter 2021 (Due 05/2021)			4th Quarter 2021 (Due 02/2022)			Year 4 Totals ⁽¹⁾
	Fixed Hourly Rate	# Hours	Total Projected Costs	Fixed Hourly Rate	# Hours	Total Projected Cost	
Position Title							
Principal							
Lead Consultant							
Consultant							
Analyst							
Not-To-Exceed Total Cost							

⁽¹⁾ = Sum of 1st and 4th Quarter Not-To-Exceed Total Cost amounts.

Year 5 (1/1/2022 – 12/31/2022)	1st Quarter 2022 (Due 05/2022)			4th Quarter 2022 (Due 02/2023) *			Year 5 Totals ⁽¹⁾
	Fixed Hourly Rate	# Hours	Total Projected Costs	Fixed Hourly Rate	# Hours	Total Projected Cost	
Position Title							
Principal							
Lead Consultant							
Consultant							
Analyst							
Not-To-Exceed Total Cost							

(1) = Sum of 1st and 4th Quarter Not-To-Exceed Total Cost amounts.

***Transition Services billed at Year 5 rates.**

Task #2 Five Year Total amount ⁽²⁾	
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⁽²⁾= Sum of Year 1 Total amount through Year 5 Totals amount.

Tasks #3 and #4 – GASB 45 Valuation and Ad Hoc Projects Fixed Hourly Rates

Fixed Hourly Rates					
Position Title	Year 1 (1/1/2018 – 12/31/2018)	Year 2 (1/1/2019 – 12/31/2019)	Year 3 (1/1/2020 – 12/31/2020)	Year 4 (1/1/2021 – 12/31/2021)	Year 5 (1/1/2022 – 12/31/2022)
Principal	██████	██████	██████	██████	██████
Lead Consultant	██████	██████	██████	██████	██████
Consultant	██████	██████	██████	██████	██████
Analyst	██████	██████	██████	██████	██████

Transition Services billed at Year 5 rates.

Task #3 Projected Hours Per Position Per Activity

Projected Hours Per Position Task #3 Activity				
Position Title	April 1, 2018 Valuation	April 1, 2019 Valuation	April 1, 2020 Valuation	April 1, 2021 Valuation
Principal	■	■	■	■
Lead Consultant	■	■	■	■
Consultant	■	■	■	■
Analyst	■	■	■	■