



**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE  
EMPLOYEE BENEFITS DIVISION**

**BANKING SERVICES**

**AGREEMENT #C000593**

**AMENDMENT #2**

**between**

**NEW YORK STATE  
DEPARTMENT OF CIVIL SERVICE**

**and**

**WELLS FARGO BANK, N.A.**

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE**  
**and**  
**WELLS FARGO BANK, N.A.**  
**AGREEMENT #C000593**  
**AMENDMENT #2**

This Amendment #2 to Agreement #C000593 Banking Services, is entered into, by and between the NEW YORK STATE DEPARTMENT OF CIVIL SERVICE (“DCS” or the “Department”), having its principal office at Agency Building 1, Albany, New York 12239, and WELLS FARGO BANK, N.A. (“the Contractor”) authorized to do business in the State of New York with a principal place of business located at 375 Park Avenue, 6<sup>th</sup> Floor, New York, NY 10152, collectively referred to as “the Parties.”

**WITNESSETH**

WHEREAS, Section 2.1.0 of the Agreement provides that the Agreement is for three (3) years commencing on October 1, 2010 and continuing through and including September 30, 2013, with up to two (2) one (1) year optional extension periods, exercisable at the sole discretion of the Department subject to the approval of the NYS Attorney General and the Office of State Comptroller.

WHEREAS, Section 2.2.0 of the Agreement provides that the Agreement is subject to amendment(s) only upon mutual consent of the Parties, reduced to writing and approved by the NYS Attorney General and the Office of the State Comptroller; and

WHEREAS, the Department has determined that a one-year extension of the Agreement from October 1, 2013 to September 30, 2014 is appropriate; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties hereby amend the Agreement as follows:

- I. The Agreement shall be extended for a one-year period commencing on October 1, 2013 and continuing through and including September 30, 2014, subject to the approval of the New York State Attorney General’s Office and the Office of the State Comptroller. One optional one-year extension from October 1, 2014 through and including September 30, 2015 shall remain,

and is exercisable at the sole discretion of the Department, subject to the approval by the New York State Attorney General's Office and the Office of the State Comptroller.

- II. For the period commencing on October 1, 2013 and continuing through and including September 30, 2014, the Department agrees to reimburse the Contractor in accordance with the fees/expenses provided for in Article VII of the Agreement at the Year 4 rates set forth in Exhibits 3 and 4 of the Agreement.
- III. Article X: Use and Disclosure of Protected Health Information is revoked in its entirety and replaced with a new Article X, effective September 23, 2013:

**ARTICLE X: Use And Disclosure Of Protected Health Information**

10.1.0 For purposes of this Article X, "Use And Disclosure Of Protected Health Information" of this Agreement, 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 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 "NYSHIP PHI."

10.2.0 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 such services performed under this Agreement. To the extent Contractor acts as a HIPAA “business associate” of the group health plans identified as “covered entities” in this Section 10.2.0, Contractor shall adhere to the requirements as set forth in Article X of this Agreement.

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

instances of which it is aware in which the confidentiality of the information has been breached.

10.4.0 Nondisclosure of NYSHIP's PHI. The Contractor shall not create, receive, maintain, access, transmit, use or further disclose NYSHIP'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.

10.5.0 Safeguards. The Contractor shall use appropriate, documented safeguards to prevent the use or disclosure of NYSHIP'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.

10.6.0 Breach Notification

a) Reporting. The Contractor shall report to the Department any breach of unsecured PHI, including any access to, use or disclosure of the NYSHIP's PHI otherwise than as provided for by this Agreement, of which the Contractor becomes aware. An acquisition, access, transmission, use or disclosure of NYSHIP'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 NYSHIP's PHI has been compromised based on the Contractor's risk assessment of at least the following factors: (i) the nature and extent of NYSHIP's PHI involved, including the types of identifiers and the likelihood of re-identification; (ii) the unauthorized person who used NYSHIP's PHI or to whom the disclosure was made; (iii) whether NYSHIP's PHI was actually acquired or viewed; and (iv) the extent to which the risk to NYSHIP's PHI has been mitigated. Further, the Contractor shall report to the Department any security incident of which it becomes aware, subject to Section 10.6.0 e) below. "Security incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information, or interference with system operations in an information system. The Contractor shall notify the Department within five (5) business days of the date the Contractor becomes aware of the event for which reporting is required by this Section 10.6.0 a).

- b) Required Information. The Contractor shall provide the following information to the Department within ten (10) business days of discovery except when, despite all reasonable efforts by the Contractor to obtain the information required, circumstances beyond the control of the Contractor necessitate additional time. Under such circumstances, the Contractor shall provide to the Department the following information as soon as possible and without unreasonable delay, but in no event later than thirty (30) calendar days from the date of discovery:
- i. the date of the breach incident;
  - ii. the date of the discovery of the breach;
  - iii. a brief description of what happened;
  - iv. a description of the types of unsecured PHI that were involved;
  - v. identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the breach;

- vi. 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
  - vii. any other details necessary to complete an assessment of the risk of harm to the individual.
- c) 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.
  - d) 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.
  - e) 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.
  - f) 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.

10.7.0 Associate’s Agents. The Contractor shall require all of its agents or KeySubcontractors to whom it provides NYSHIP’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 NYSHIP’s PHI under this Agreement.

- 10.8.0 Availability of Information to the Department. The Contractor shall make available to the Department such information and documentation as the Department may require regarding any disclosures of PHI by the Contractor to fulfill the Department's obligations to provide access to, to provide a copy of, and to account for disclosures of NYSHIP'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. Contractor must provide the Department with access to NYSHIP's PHI in the form and format requested, if it is readily producible in such 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 NYSHIP'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, Contractor must provide the Department with access to the requested PHI in a readable electronic form and format.
- 10.9.0 Amendment of NYSHIP's PHI. The Contractor shall make NYSHIP'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 NYSHIP's PHI into copies of NYSHIP's PHI as maintained by the Contractor.
- 10.10.0 Internal Practices. The Contractor shall make its internal practices, policies and procedures, books, and records, and agreements relating to the use and disclosure of NYSHIP's PHI, whether received from the Department or created or received by the Contractor on behalf of the Department, available to the Department and/or to 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.



10.11.0 Termination under HIPAA.

- a) This Agreement may be terminated by the Department at the Department's discretion if the Department determines that the Contractor, as a business associate, has violated a material term of this Article or of the Agreement with respect to the Contractor's obligations under this Article.
- b) Disposition of the NYSHIP's PHI: At the time this Agreement is terminated, the Contractor shall, if feasible, return or destroy all of NYSHIP'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 NYSHIP's PHI infeasible.

10.12.0 Indemnification.

The Contractor agrees to indemnify, defend and hold harmless the State, the group health plans identified herein, and the Department and its respective employees, officers, agents or other members of its workforce (each of the foregoing hereinafter referred to as "Indemnified Party") against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this Agreement or from any acts or omissions related to this Agreement by the Contractor or its employees, officers, Key Subcontractors, agents or other members of its workforce. Accordingly, the Contractor shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results from the Contractor's acts or omissions hereunder. The Contractor's obligation to

indemnify any Indemnified Party shall survive the expiration or termination of this Agreement.

10.13.0 Miscellaneous.

- a. Amendments. This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary to achieve and maintain compliance with the requirements of HIPAA and its implementing regulations.
- b. Survival. The respective rights and obligations of Business Associate and the “covered entities” identified herein under HIPAA and as set forth in this Article X shall survive termination of this Agreement.
- c. 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.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit covered entities to comply with HIPAA.

IV. Article XXI Responsibility Terms is hereby revoked in its entirety and replaced with a new Article XXI, as follows:

**Article XXI: Responsibility Terms**

- 21.1.0 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.

- 21.2.0 The Contractor shall at all times during the Agreement term remain responsible. The Contractor agrees, if requested by the Commissioner of the Department 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.
- 21.3.0 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 calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, 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.
- 21.4.0 Termination (for Non-Responsibility): Upon written notice to the Contractor, and a reasonable opportunity to be heard with 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 or his or her designee to be non-responsible. In such event, the Commissioner or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

V. Article XXV is added to the Agreement, as follows:

**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) developed and maintains 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 list is required to be posted on the OGS website.

- 25.2.0 By entering into a renewal or extension of this Agreement, Contractor (or any assignee) certifies that it will not utilize on such Agreement any subcontractor that is identified on the prohibited entities list.
- 25.3.0 Additionally, Contractor understands that during the term of the Agreement, should the Department receive information that a person is in violation of the above-referenced certification, the Department will 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 including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.
- 25.4.0 The Department reserves the right to reject any renewal, extension or request for assignment for an entity that appears on the prohibited entities list hereafter and to pursue a responsibility review with respect to any entity that is granted a contract extension/renewal or assignment and appears on the prohibited entities list thereafter.

- VI. Appendix A, dated June 2011, to the Agreement is revoked in its entirety and replaced with a new Appendix A, dated December 2012.
- VII. Except as expressly amended by this Amendment #2, all the terms and conditions of the original Agreement as amended shall remain in full force and effect.
- VIII. This Amendment #2 shall be deemed effective October 1, 2013, except for Article X, which becomes effective September 23, 2013 and new Appendix A, which became effective as of December 1, 2012.

IN WITNESS WHEREOF, the Parties hereto have hereunder signed this Amendment #2 to Agreement #C000593 on the day and year appearing opposite their respective signatures.

Contractor: Wells Fargo Bank, N.A.

Contract Number: C000593

Agency Certification: "In addition to the acceptance of this Amendment #2 to the Agreement, I also certify that original copies of this signature page will be attached to all exact copies of this Amendment #2 to the Agreement."

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE**

**DEIRDRE TAYLOR**

**DEPUTY COMMISSIONER FOR ADMINISTRATION**

By: \_\_\_\_\_

Date: 10.16.13

**WELLS FARGO BANK, N.A.**

By: \_\_\_\_\_

Name: Bernardo Fe

Title: SVP

Date: 9/25/13

STATE OF New York )  
COUNTY OF Schenectady )  
ss;

On the 25<sup>th</sup> day of SEPTEMBER, 2013, before me personally came BERNARDO RAMOS, 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 SENIOR VICE PRESIDENT of WELLS FARGO BANK N.A. the corporation or organization described in and which executed the above instruments and that (s) he signed his/her name thereto.

NOTARY PUBLIC

Approved as to form:

ER  
AT  
By: \_\_\_\_\_  
Da: \_\_\_\_\_

Approved:

THOMAS P. DINAPOLI  
ST  
By: \_\_\_\_\_  
Da: \_\_\_\_\_