

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE**

**and**

**DIALOGDIRECT INC. dba HEALTHLOGIX**

**AGREEMENT NO. C000730**

This Agreement (“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, Albany, NY, 12239 and DialogDirect Inc. d/b/a HealthLOGIX (HealthLOGIX) (“Contractor”), a corporation authorized to do business in the State of New York with a principal place of business located at 13700 Oakland Avenue, Highland Park, MI 48203. The foregoing are collectively referred to as “the Parties”.

**WITNESSETH**

WHEREAS, Civil Service Law Article XI (“CSL”) authorizes and directs the President of the State Civil Service Commission and New York State Department of Civil Service (“President”) to establish a health benefit plan for the benefit of State employees, retirees, and their dependents, Participating Employers’ employees, retirees, and their dependents and Participating Agencies’ employees, retirees, and their dependents; and

WHEREAS, CSL authorizes and directs the President to purchase a contract or contracts to provide the benefits under the health benefit plan; and

WHEREAS, the Department requires the services of a contractor to produce and distribute employee benefit cards (“EBC”) on behalf of the Department to individuals covered under The Empire Plan, the Student Employee Health Plan (“SEHP”) and the Excelsior Plan; and

WHEREAS, on March 16, 2020, the New York State Office of the State Comptroller (“OSC”) approved a single source exemption from advertising in the *Contract Reporter* for a contract with DialogDirect, Inc. to supply EBCs.

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

**SECTION 1: CONTRACTOR RESPONSIBILITIES AND QUALIFICATIONS**

- 1.1 The Contractor is responsible for providing Project Services as set forth in Section 5, in such a manner to comply with the requirements in the Agreement and for meeting all contractual obligations in this Agreement, including all exhibits, and any subsequent amendments mutually agreed to in writing between the Parties.

- 1.2 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.
- 1.3 Contractor acknowledges that the Agreement is being entered into by the Department in reliance on Contractor's representations concerning their particular qualifications, experience, financial standing, management expertise and technical expertise of the Contractor and its staff assigned and subcontractors, if any, engaged to provide Project Services under this Agreement. Subcontractor(s) means those vendor(s) with whom the Contractor subcontracts to provide Project Services and incorporated as a part of the Contractor's Program Team.
- 1.4 Throughout the term of this Agreement, in the event there is a substantial or material change, as defined below, in the ownership or financial viability of the Contractor, its corporate affiliates, subsidiaries or divisions, the Contractor is required to provide notice and details of any such change to the Department via written notice promptly when such is first known by Contractor, its corporate affiliates, subsidiaries or divisions, or subcontractors. 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.
- "Substantial" or "material" change shall be defined to include, but not be limited to, sale, acquisitions, mergers or takeovers involving the Contractor, its corporate affiliates, subsidiaries or divisions or partners which result in a change in the controlling ownership or assets of such entity after the submission of the Proposal; or entry of an order for relief under Title 11 of the United States Code; the making of a general assignment for the benefit of creditors; the appointment of a general receiver or trustee in bankruptcy of Contractor's, its corporate affiliates, subsidiaries or divisions, or partners' business or property; or action by Contractor, its corporate affiliates, subsidiaries or divisions, or partners under any state insolvency or similar law for the purposes of its bankruptcy, reorganization or liquidation; or court ordered liquidation against Contractor, its corporate affiliates, subsidiaries or divisions, or partners.
- 1.5 The Contractor shall immediately notify the Department upon learning of any situation that can reasonably be expected to adversely affect the performance of Project Services.

## **SECTION 2: AGREEMENT DURATION AND AMENDMENTS**

- 2.1 The Agreement shall begin on May 21, 2020 and end on May 31, 2025. This Agreement is subject to the prior approval of the New York State Attorney General's Office ("AG") and OSC.
- 2.2 The Agreement is subject to amendment(s) only upon consent of the Parties, reduced to writing and approved by the AG and OSC.

## **SECTION 3: DOCUMENT INCORPORATION AND ORDER OF PRECEDENCE**

- 3.1 The Agreement shall be comprised solely of the following documents which, in the event of an inconsistency or conflicting terms, shall be given precedence in the order indicated:
  - 3.1.1 Appendix A (Standard Clauses for All New York State Contracts), dated October 2019, attached hereto, is hereby expressly made a part of this Agreement as fully as if set forth at length herein;
  - 3.1.2 Any Amendments to the body of the Agreement;
  - 3.1.3 The body of the Agreement (that portion preceding signatures);
  - 3.1.4 Appendix B (Standard Clauses for Department Contracts) dated April 2020, attached hereto, is hereby expressly made a part of this Agreement as if set fully forth at length herein;
  - 3.1.5 Appendix C (Information Security Requirements) dated April 2020, attached hereto, is hereby expressly made a part of this Agreement as if set fully forth at length herein;
  - 3.1.6 Appendix C-1, Glossary for Appendix B and Appendix C, dated April 2020, attached hereto, is expressly made a part of this Agreement as if set fully forth at length herein;
  - 3.1.7 Appendix D (Participation by Minority and Women-Owned Business Enterprises: Requirements and Procedures), attached hereto, is hereby expressly made a part of this Agreement as fully as if set fully forth at length herein;
  - 3.1.8 Appendix D-1 (MWBE Equal Employment Opportunity Policy Statement) attached hereto, is hereby expressly made a part of this Agreement as if set fully forth at length herein;

- 3.1.9 Appendix E (Participation Opportunities for New York State Certified Service-Disabled Veteran-Owned Businesses), attached hereto, is hereby expressly made a part of this Agreement as if set fully forth at length herein;
  - 3.1.10 Appendix F (HIPAA Business Associate Requirements) dated June 2013, attached hereto, is hereby expressly made a part of this Agreement as if set fully forth at length herein;
  - 3.1.11 Attachment 1 which sets forth the EBCs' Specifications;
  - 3.1.12 Attachment 2 which consists of the Sample Empire Plan Employee Benefit Card and Card Carrier;
  - 3.1.13 Attachment 3 which sets forth the Contractor's Fees for Project Services;
  - 3.1.14 Attachment 4 which consists of the Sample Card Detail Report;
  - 3.1.15 Attachment 5 which consists of the Sample Card Summary Report;
  - 3.1.16 Attachment 6 which consists of the Sample Data Load Count Report;
  - 3.1.17 Attachment 7 which consists of the Sample Address Change Report;
  - 3.1.18 Attachment 8 which consists of the Sample Employee Benefit Card Envelope;
  - 3.1.19 Attachment 9 which consists of the Sample Quarterly Performance Report;
  - 3.1.20 Attachment 10 which consists of the Sample Empire Plan Card File Layout;
  - 3.1.21 Attachment 11 which consists of the Sample SEHP and Excelsior Card File Layout; and
  - 3.1.22 Attachment 12 which consists of the Employee Benefit Cards Production Scenarios.
- 3.2 Only documents expressly enumerated above shall be deemed a part of the Agreement, and references contained in those documents to additional Contractor documents not enumerated above shall be of no force and effect.
- 3.3 All prior agreements, representations, statements, negotiations and undertakings are superseded. All statements made by the Department shall be deemed to be representations and not warranties.

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

#### **SECTION 4: LEGAL AUTHORITY TO PERFORM**

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

#### **SECTION 5: PROJECT SERVICES**

- 5.1 During the term of this Contract, the Contractor will be responsible for the performance of the following services/tasks ("Project Services") on behalf of the Department for State employees, retirees, and their dependents, for Participating Employers' employees, retirees, and their dependents, and for Participating Agencies' employees, retirees, and their dependents. The terms "Employee" and "Retiree" are defined in 4 NYCRR Part 73, as amended, or as modified by collective bargaining contract. Dependent means the spouse, domestic partner, and children under twenty-six (26) years of age of an Enrollee – defined as a State, Participating Employer (PE), or Participating Agency (PA) Employee, former State, PE or PA Employee, or other individual determined by the Department to be eligible to enroll as the result of law, regulation, rules and/or collective bargaining, who is enrolled in the New York State Health Insurance Program (NYSHIP). A PE is a public authority, public benefit corporation, or other public agency, subdivision, or quasi-public organization of the State which elects, with the approval of the President of the Civil Service Commission, to participate in NYSHIP. A PA is any unit of local government such as school districts, special districts and district or municipal corporations which elects, with the approval of the President of the Civil Service Commission, to participate in NYSHIP:

- 5.1.1 Production and distribution of EBC to individuals covered under The Empire Plan - the self-insured comprehensive health benefit program; SEHP - a health insurance plan for graduate student employees of the State University of New York system; and the Excelsior Plan - a variation of The Empire Plan available to NYS local government units which choose to participate in NYSHIP.
- 5.1.2 Creation and distribution of associated Management Reports (defined as Plan-specific accurate weekly Card Detail, Card Summary, Data Load Count and Address Change Reports) to the Department to manage the Agreement.
- 5.2 The Contractor must maintain an organization of sufficient size with staff that possess the necessary skills and experience to administer, manage and oversee all aspects of the Contract during implementation, operation and transition.
  - 5.2.1 The Contractor must:
    - a. Establish and/or dedicate a team of qualified and experienced employees to the Department and maintain and adjust staffing patterns at appropriate levels to provide Project Services as required by the Department;
    - b. Provide timely responses (within two (2) Business Days) to questions and requests posed by the Department. Business Day(s) means every Monday through Friday, except for days designated as Business Holidays by the State. Business Holidays are legal holidays observed by the State, including New Year's Day; Martin Luther King, Jr. Day; President's Day; Memorial Day; Independence Day; Labor Day; Columbus Day; Veterans' Day; Thanksgiving Day; and Christmas Day;
    - c. Notify the Department in writing of changes in key personnel, Subcontractor(s), or production facility locations which may impact Project Services. Substituted key personnel, Subcontractor(s) or production locations shall have comparable or better qualifications, as determined by the Department in its sole discretion;
    - d. Correct any and all errors in any reports, materials, documents and/or services provided or prepared by the Contractor pursuant to this Contract due solely to an error by the Contractor. The Contractor will correct such errors at its own expense provided the Department notifies the Contractor of such errors and 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; and

- e. Comply with all Health Insurance Portability and Accountability Act of 1996 (HIPAA) Business Associate requirements related to the use and disclosure of personal health information as further described in Appendix F.

5.3 The Contractor must comply with the following Materials Processing and Prototype Specifications:

- 5.3.1 The materials used in the production of EBCs, Card Carriers and Envelopes shall meet the materials specifications set forth in the *Employee Benefit Card Specifications* (Attachment 1) and *Sample Employee Benefit Card Envelope* (Attachment 8). Card Carrier means a paper, cardstock or other acceptable medium designed to function as a holder (whether the cards are spot glued or perforated as a part of the holder), and able to carry printed content, for the benefit cards. Envelope means a flat paper container with windows and a sealable flap, used to enclose the Card Carrier and Employee Benefit Card(s).
- 5.3.2 The Contractor may utilize any combination of offset, digital or flexographic methods for producing durable EBCs that meet the Contract specifications as set forth in *Employee Benefit Card Specifications* (Attachment 1).
- 5.3.3 The layout of the EBCs, Card Carriers and Envelopes shall meet the Prototype and Information Specifications set forth in the *Employee Benefit Card Specifications* (Attachment 1) and *Sample Employee Benefit Card Envelope* (Attachment 8). A sample of the required EBC, Card Carrier, and Envelope is set forth in the *Sample Empire Plan Employee Benefit Card and Card Carrier* (Attachment 2) and *Sample Employee Benefit Card Envelope* (Attachment 8).
- 5.3.4 Within 10 Business Days after commencement of the Contract, the Contractor shall submit prototypes of the EBCs, Card Carriers and Envelopes to the Department. The Department shall, in its sole discretion, determine if the Contractor's EBCs, Card Carriers, and Envelopes meet the specifications set forth in the *Employee Benefit Card Specifications* (Attachment 1) and the *Sample Employee Benefit Card Envelope* (Attachment 8).
- 5.3.5 The Contractor shall be able to customize, modify, and produce new or modified EBC layouts and Card Carrier contents within sixty (60) Calendar Days' notice at the written direction of the Department.
- 5.3.6 The Contractor's production process shall display the enrollee's name and up to five (5) dependents' names on the EBC (four (4) dependents' names for the Excelsior Plan); attach up to four (4) EBCs (two (2)

EBCs for the Excelsior Plan) with the same enrollee identification number onto a single Card Carrier addressed to the enrollee or dependent (as applicable); and insert it in a single Envelope that meets the specifications set forth in the *Employee Benefit Card Specifications* (Attachment 1) and *Sample Employee Benefit Card Envelope* (Attachment 8). At the commencement of the Agreement, the Contractor will be provided with a test file and the Contractor must provide sample EBCs, Card Carriers and Envelopes within 10 Business Days which demonstrate to the Department's satisfaction that the Contractor is capable of producing and distributing EBCs in all possible production scenarios as set forth in *Employee Benefit Cards Production Scenarios* (Attachment 12).

- 5.3.7 The number and types of EBCs actually ordered by the Department will be based on the EBC Data File provided to the Contractor by the Department or on ad hoc basis pursuant to a written request by the Department.
- 5.3.8 The Contractor shall pre-sort and mail the Envelopes containing the EBC(s) and cards carriers through the U.S. Postal Service (USPS), first class to all enrollees and dependents who reside in the United States and Canada in a manner that ensures compliance with HIPAA requirements and with USPS technology that results in maximum postal discounts.
- 5.3.9 The Contractor shall have appropriate controls in place to ensure:
  - a. No defective EBCs, Card Carrier or Envelopes are mailed;
  - b. All EBCs are mailed to the correct cardholder(s), defined as an individual(s) covered by the Empire Plan, the Student Employee Health Plan or the Excelsior Plan for which an EBC has been requested to be produced or has been produced by the Contractor; and
  - c. The Department is only invoiced for defective EBCs, Card Carriers or Envelopes or any associated postage charges, produced or mailed by the Contractor that the Department directly caused to be defective.
  - d. For purposes of this Section, an EBC, Card Carrier and/or Envelope is defective if:
    - i. The EBCs, Card Carriers and/or Envelope do not meet the specifications set forth in the *Employee Benefit Card*



*Specifications (Attachment 1) and Sample Employee Benefit Card Envelope (Attachment 8); or*

- ii. The EBCs, Card Carriers and/or Envelopes do not meet the specifications as modified in writing by the Department; or
  - iii. After having been mailed, it is determined by the Department that the EBC(s) was not properly matched with its associated Card Carrier; or
  - iv. The cardholder information contained in the EBC Data File provided by the Department is not properly displayed on the EBC and/or Card Carrier.
- 5.3.10 The Contractor shall ensure that it securely maintains and properly accounts for all Program materials including blank EBCs, Card Carriers and/or Envelopes that contain the NYSHIP or New York State (NYS) logo or pre-printed Program information.
- 5.3.11 Production Cycle means the time period that elapses from when the Department, or its agent, makes the EBC Data File available to the Contractor until the Contractor presents the associated EBCs to the U.S. Postal Service for delivery to the Cardholder, excluding any time period during which EBCs are stored by the Contractor prior to mailing, at the direction of the Department. In the event of unforeseen emergency circumstances which affect the Contractor's ability to adhere to its Production Cycle, the Contractor shall immediately notify the Department and provide the following:
- a. The circumstance(s) precluding production/delivery; and
  - b. A statement of whether or not succeeding production/deliveries will be affected and when the situation will be corrected.

Regardless of the circumstance, the Contractor shall remain responsible for providing the associated EBCs and reports prior to the following week's production schedule.

5.4 The Contractor must comply with the following Weekly Card Production and Distribution for New, Duplicate and Replacement EBCs requirements:

- 5.4.1 Produce and distribute EBCs reflecting the data contained in the Department's weekly EBC Data File that comply with EBC specifications, the Production Cycle and the performance standards set forth in this Contract. There shall be no required variation in the

Contractor's standard production services and the distribution of new, duplicate and replacement EBCs.

- 5.4.2 Produce one EBC for enrollees with individual coverage and two EBCs for enrollees with family coverage who have five (5) or fewer dependents (four (4) or fewer dependents for enrollees of the Excelsior Plan). The Contractor shall produce additional EBCs for enrollees having six (6) or more dependents (five (5) or more dependents for enrollees of the Excelsior Plan). Each EBC shall list up to six (6) covered names (five (5) covered names for the Excelsior Plan).
- 5.4.3 The Department anticipates placing weekly card production orders but may request EBCs on a more frequent basis over the Contract Term at the costs set forth in *Contractor's Fees for Project Services* (Attachment 3). During each weekly Production Cycle, the Contractor shall complete all Project Services associated with the production and distribution of EBCs.
- 5.4.4 The Department will transmit to the Contractor a weekly computerized EBC Data File via secure transfer containing detailed benefit card data elements shown in the *Sample Empire Plan Card File Layout* (Attachment 10) and *Sample SEHP and Excelsior Card File Layout* (Attachment 11). The SEHP Card File Layout will be transmitted in two separate files: one file for employees of the State University of New York and one file for employees of the City University of New York.
- 5.5 The Contractor must create and electronically distribute to the Department in a HIPAA-compliant manner, accurate weekly Card Detail, Card Summary, Data Load Count and Address Change Reports for each Plan comparable to the *Sample Card Detail Report* (Attachment 4), *Sample Card Summary Report* (Attachment 5), *Sample Data Load Count Report* (Attachment 6) and *Sample Address Change Report* (Attachment 7). Each report must be provided to the Department within two (2) Business Days from the completion of each Production Cycle. The Department reserves the right to request reports be sent in paper and/or a searchable electronic format that is acceptable to the Department.
- 5.6 SEHP cards contain an expiration date and, upon notice by the Department to the Contractor, will be re-issued annually to coincide with the start of a new academic year. The Department reserves the right to review templates of the EBC prior to production and mailing. Should the Department require a complete or partial re-issuance of Empire Plan or Excelsior EBCs during the term of the Contract, the Department and the Contractor shall mutually agree in writing on the time-period needed for the Contractor to produce and distribute the EBCs and Management Reports. Routine weekly card Production Cycle will continue during the Production Cycle(s) for a complete or partial re-issuance.

## **SECTION 6: PERFORMANCE GUARANTEES**

- 6.1 The Parties agree that the following guarantees and the corresponding credit amounts shall be in effect during the Contract Term for failure to meet the Contractor Performance Guarantees. The Contractor agrees that failure to perform the Project Services in such a manner which either meets or exceeds any or all of the Contractor Performance Guarantee(s) as set forth in this Section, or fails to make any payment(s) of any credit amounts for such failure to meet any Performance Guarantee(s) does not relieve the Contractor of the performance of the activities, duties, and obligations as otherwise set forth in this Contract. Credit amounts are cumulative.
- 6.2 Amounts due from the Contractor to the Department for failure to perform and audit credit amounts, as determined pursuant to the provisions of this Contract, shall be made in such amounts as determined by the Department to be final.
- 6.3 Upon such determination of amounts due pursuant to this Section, the Department shall notify the Contractor, in writing, and the Contractor shall apply such amounts as a credit against the Project Services fee within 30 Calendar Days of receiving such notification by the Department.
- 6.4 Production Cycle Guarantee
- 6.4.1 The Contractor guarantees that each weekly Production Cycle shall be completed within the time frames set forth below and shall credit \$250 per Business Day for each weekly Production Cycle that is not completed within the required time frames.
- a. For orders  $\leq$  10,000 cards, within three (3) Business Days from the date that the EBC Data File is made available by the Department.
  - b. For orders  $>$  10,000 but  $\leq$  40,000 cards, within four (4) Business Days from the date that the EBC Data File is made available by the Department.
  - c. For orders  $>$  40,000 cards, within the number of Business Days equal to the number of EBCs requested in the EBC Data File divided by 10,000, and then rounded up to the next whole number. **[FOR EXAMPLE:** If the Department requests 46,700 EBCs, the Contractor must produce the EBCs within 5 Business Days. (46,700/10,000 = 4.67)]
- 6.5 Report Guarantee
- 6.5.1 The Contractor guarantees that accurate Management Reports shall be delivered to the Department weekly, within two (2) Business Days

from the completion of each Production Cycle. The Contractor shall submit the *Sample Quarterly Performance Report* (Attachment 9) to the Department within fifteen (15) Business Days after the end of December, March, June, and September each year during the Contract Term.

- 6.5.2 The Contractor shall credit \$250 per Business Day for each Management Report not received within two (2) Business Days from the due dates specified above.

## **SECTION 7: PAYMENT FOR SERVICES**

- 7.1 The Department agrees to reimburse the Contractor up to \$634,310, based on the fees set forth in *Contractor's Fees for Project Services* (Attachment 3).
- 7.2 The EBC fee and Card Carrier and Envelope fees for the Empire Plan and for the SEHP and Excelsior plans in Attachment 3 represent the charges to the Department to cover all Project Services required of the Contractor, with the exception of USPS charges which will be reimbursed on a pass-through basis.
- 7.3 The Contractor is bound by the EBC fee(s) and Card Carrier and Envelope fee(s) identified in Attachment 3 for the entire Contract Term, unless amended in writing by the Parties and approved by OSC.
- 7.4 The Contractor shall invoice the Department, monthly in arrears, for all Project Services rendered during the preceding month, in accordance with the provisions set forth herein, for Project Services rendered, together with full supporting detail(s) to the State's satisfaction. Such invoice shall be emailed to [accountspayable@ogs.ny.gov](mailto:accountspayable@ogs.ny.gov). The subject line should include the Invoice Number and the term "Department of Civil Service". Such invoice must include:
- 7.4.1 Name of the NYS Agency being billed;
- 7.4.2 The name of the vendor and NYS Statewide Financial System (SFS) Vendor Number;
- 7.4.3 Contract number; and
- 7.4.4 Quantities and unit prices for EBCs, Card Carriers, and Envelopes.
- 7.5 The Contractor shall also separately invoice the Department, on a monthly basis, for actual postage costs incurred in the previous month, using the best United States Postal Service discounts available for mailing EBCs and/or Card Carriers and Envelopes.

- 7.6 After review and approval of the Contractor's invoice, the Department shall submit it to OSC for payment. OSC shall render payment for invoices under the Agreement in accordance with ordinary State procedures and practices. The Department will make best efforts to process all acceptable invoices within thirty (30) days of their receipt; however, failure to make payment within said timeframe shall not be considered a breach of contract. The Contractor acknowledges that timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article XI-A of the State Finance Law. Submission of an invoice and payment thereof shall not preclude the Department, as applicable, from reimbursement or demanding a price adjustment in any case where Project Services as delivered are found to deviate from the terms and conditions of the Agreement.
- 7.7 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 AG and OSC.

## **SECTION 8: MODIFICATION OF PROJECT SERVICES**

- 8.1 In the event that laws or regulations enacted by the federal or State government, ratified collective bargaining agreements with unions representing New York State employees or any other factor, as solely determined by the Department, have an impact upon the performance or requirements of the Project Services in such a manner that the Department determines that modifications of the Project Services are necessary, the Department shall notify the Contractor of the required modifications. Such written notice shall provide the Contractor with a reasonable time period to implement such revisions or modifications.
- 8.2 To the extent that any of the modifications required under this Section constitute a material and substantial change in the Project Services which the Contractor would be required to perform or deliver under this Agreement, either Party may submit a written request to the other Party to initiate review of the Project Services fee(s) and guarantees under the Agreement to address such modifications. All requests must be accompanied by appropriate documentation including justification for any modification in associated fees.

## **SECTION 9: USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION**

- 9.1 For purposes of this Section, the term "Protected Health Information" ("PHI") means any information, including demographic information collected from an individual, that relates to the past, present, or future physical or mental health or condition of an individual, to the provision of health care to an individual, or to the past, present, or future payment for the provision of health care to an individual, that identifies the individual, or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual. Within the

context of 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. All PHI received or created by the Contractor as a consequence of its performance under this Agreement is referred to herein collectively as "Department's PHI."

- 9.2 The Contractor acknowledges that the Contractor is a HIPAA "Business Associate" of the Department as a consequence of the Contractor's provision of Project Services on behalf of the Department within the context of the Contractor's performance under this Agreement and that the Contractor's provision of Project Services will involve the disclosure to the Contractor of individually identifiable health information from the Department or other service providers on behalf of the Department, as well as the Contractor's disclosure to the Department of individually identifiable health information as a consequence of the services performed under this Agreement. As such, the Contractor, as a Business Associate, will be required to comply with the provisions of Appendix F, HIPAA Business Associate Requirements annexed hereto.

## **SECTION 10: NOTICES**

- 10.1 All notices permitted or required hereunder shall be in writing and shall be transmitted via certified or registered United States mail, return receipt requested; by personal delivery; by expedited delivery service; or by e-mail. Such notification must be sent to:

### State of New York Department of Civil Service

Name: Jim DeWan  
Title: Director Employee Benefits Division  
Address: Swan Street Building, Core 1, Albany NY, 12239  
Telephone Number: 518-473-1977  
E-Mail Address: [James.Dewan@cs.ny.gov](mailto:James.Dewan@cs.ny.gov)

### DialogDirect Inc. d/b/a HealthLOGIX

Name: Chris York  
Title: Senior Vice President  
Address: 13700 Oakland Avenue, Highland Park, MI 48203  
Telephone Number: 888-563-6391  
E-Mail Address: [Chris.York@qualfon.com](mailto:Chris.York@qualfon.com)

- 10.2 Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of email, upon receipt.

- 10.3 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 Contract. Additional individuals may be designated in writing by the Parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

## **SECTION 11: COOPERATION WITH INVESTIGATIONS AND AUDITS**

- 11.1 In addition to the audit authority requirements specified in Appendices A, B and C to this Agreement, the Contractor agrees to cooperate with the Department, any other authorized State or federal Department, and any law enforcement authority, in the investigation, documentation and litigation of any alleged illegal act, misconduct or unethical behavior related to the Agreement, or in connection with any audit.

## **SECTION 12: INSURANCE REQUIREMENTS**

- 12.1 COMPLIANCE WITH THE NEW YORK STATE WORKERS' COMPENSATION LAW. Sections 57 and 220 of the New York State Workers' Compensation Law (WCL) provide that the Department shall not enter into any contract unless proof of workers' compensation and disability benefits insurance coverage is produced. Prior to entering into a contract with the Department, the Contractor and Subcontractor(s) or Affiliates, with more than \$100,000 in expected expenses over the life of the Agreement, if any, will be required to verify for the Department, on forms authorized by the New York State Workers' Compensation Board, the fact that they are properly insured or are otherwise in compliance with the insurance provisions of the WCL.
- 12.2 Prior to the start of work, the Contractor shall procure, at its sole cost and expense, and shall maintain in force at all times during the Contract Term, policies of insurance as herein set forth below, written by companies licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York with an A.M. Best Company rating of "A-" or better or as acceptable to the Department. The Department may, at its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when Certificates and/or other policy documentation is accompanied by a completed Excess Lines Association of New York (ELANY) Affidavit; provided that nothing herein shall be construed to require the Department to accept insurance placed with a non-authorized carrier under any circumstances.

The Contractor shall deliver to the Department evidence of such policies in a form acceptable to the Department. These policies must be written in accordance with the requirements of the paragraphs below, as applicable.

12.2.1 General Conditions Applicable to Insurance. All policies of insurance required by this Agreement must meet the following requirements:

- a. Coverage Types and Policy Limits. The types of coverage and policy limits required from the selected Contractor are specified in Section 12.2.8, Specific Coverages and Limits, below.
- b. Policy Forms. Except as may be otherwise specifically provided herein or agreed to in writing by the Department, policies must be written on an occurrence basis. Under certain circumstances, the Department may elect to accept policies written on a claims-made basis provided that, at a minimum, the policy remains in force throughout the performance of the services and for three (3) years after completion of the contract. If the policy is cancelled or not renewed during that time, the Contractor must purchase, at its sole expense, Discovery Clause coverage sufficient to cover the 3-year period after completion of the contract. Written proof of this extended reporting period must be provided to the Department prior to the policy's expiration or cancellation.
- c. Certificates of Insurance/Notices. The Contractor shall provide a Certificate or Certificates of Insurance, in a form satisfactory to the Department, before commencing any work under this Agreement. Certificates shall reference the Contract number. Certificates shall be mailed to:

Brian Bopp, Assistant Director of Financial Administration  
New York State Department of Civil Service  
Empire State Plaza  
Building #1 17<sup>th</sup> Floor  
Albany, NY 12239

- d. Unless otherwise agreed upon, policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) days prior, written notice except for non-payment, in which case notice shall be provided as required by law to:

Brian Bopp, Assistant Director of Financial Administration  
New York State Department of Civil Service  
Empire State Plaza  
Building #1 17<sup>th</sup> Floor



- e. In addition, if required by the Department, the Contractor shall deliver to the Department within forty-five (45) days of such request a copy of any or all policies of insurance not previously provided, certified by the insurance carrier as true and complete.

12.2.2 Certificates of Insurance shall:

- a. Be in the form approved by the Department;
- b. Disclose any deductible, self-insured retention, aggregate limit or any exclusion to;
- c. Indicate the policy that materially changes the coverage required by the Contract;
- d. Specify the Additional Insureds and Named Insureds as required herein;
- e. Refer to this Agreement by number and any other attachments on the face of the certificate;
- f. Be signed by an authorized representative of the insurance carrier or producer.
- g. Only original documents (Certificates of Insurance and other attachments) will be accepted. The Department will accept electronic forms as original documents when the document can be directly traced back to the insurance carrier, agent, or broker via e-mail distribution or similar means.

12.2.3 Primary Coverage. The Commercial General liability insurance policy shall provide primary and non-contributory coverage to the Department for any claim arising from Contractor's Work under this Agreement, or as a result of Contractor's activities. Insurance policies that remove or restrict blanket contractual liability located in the "insured contract" definition so as to limit coverage against claims that arise out of the work, or that remove or modify the "insured contract" exception to the employer's liability exclusion, or that do not cover the additional insured for claims involving injury to employees of the named insured or subcontractors, are not acceptable. Insured Contract is defined to mean that part of any other contract or agreement pertaining to Contractor's business (including an indemnification of a municipality in connection with work performed for a municipality) under which the Contractor assumes the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort

liability means a liability that would be imposed by law in the absence of any contract or agreement.

- 12.2.4 Policy Renewal/Expiration. At least two weeks prior to the expiration of any policy required by this Agreement, evidence of renewal or replacement policies of insurance with terms no less favorable to the Department than the expiring policies shall be delivered to the Department in the manner required for service of notice in Section 12.2.1(c) above. If, at any time during the term of this Agreement, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in the Agreement or proof thereof is not provided to the Department, the Contractor shall immediately cease work under the Agreement. The Contractor shall not resume work under the Agreement until authorized to do so by the Department. Any delay, time lost, or additional cost incurred as a result of the Contractor not having insurance required by the Agreement or not providing proof of the same in a form acceptable to the Department, shall not give rise to a delay claim or any other claim against the Department. Should the Contractor fail to provide or maintain any insurance required by this Agreement, or proof thereof is not provided to the Department, the Department may withhold further Contract payments, treat such failure as a breach or default of the Agreement, and/or, to secure appropriate coverage and/or purchase insurance complying with the Agreement and charge back such purchase to the Contractor.
- 12.2.5 Self-Insured Retention/Deductibles. Certificates must indicate deductibles or self-insured retentions above \$100,000, which are subject to approval from the Department. Additional surety/security may be required in certain circumstances. The Contractor shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention.
- 12.2.6 Subcontractors. Should the Contractor engage a Subcontractor, the Contractor shall endeavor to impose the insurance requirements of this Agreement on the Subcontractor, as applicable. Required insurance limits should be determined commensurate with the work of the Subcontractor. Proof thereof shall be supplied to the Department. An Additional Insured Endorsement CG 20 38 04 13 (or the equivalent) evidencing such coverage shall be provided to the Contractor prior to the commencement of any work by a subcontractor, and shall be provided to the Department upon request. For Subcontractors that are self-insured, the subcontractor shall be obligated to defend and indemnify the Additional Insureds with respect to Commercial General Liability, in the same manner that the Subcontractor would have been

required pursuant to this section had the subcontractor obtained such insurance policies.

12.2.7 Additional Insureds. The Contractor shall cause to be included in each of the liability policies required below coverage for on-going and completed operations naming as additional insureds (via ISO coverage forms CG 20 10 04 13 or 20 38 04 13 and CG 20 37 04 13 and form CA 20 48 10 13, or a form or forms that provide equivalent coverage): the Department and their officers, agents, and employees. An Additional Insured Endorsement evidencing such coverage shall be provided to the Department prior to the commencement of work. A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. If the Contractor is self-insured, the Contractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability, in the same manner that the Contractor would have been required to had the Contractor obtained such insurance policies.

12.2.8 Specific Coverage and Limits.

- a. Commercial General Liability. Commercial General Liability Insurance, (CGL) covering the liability of the Contractor for bodily injury, property damage, and personal/advertising injury arising from all work and operations under this contract, using a Commercial General Liability Insurance form (CG 00 01 12 07) or a policy providing equivalent coverage. The limits under such policy shall not be less than the following:
  - i. Each Occurrence limit – \$1,000,000
  - ii. General Aggregate – \$2,000,000
  - iii. Products/Completed Operations – \$2,000,000
  - iv. Personal Advertising Injury – \$1,000,000
  - v. Damage to Rented Premises – \$50,000
  - vi. Medical Expense – \$5,000
- b. In each case arising out of Contractor's actions arising out of this Agreement, coverage shall include the following:
  - i. Premises liability;
  - ii. Independent contractors/subcontractors;

- iii. Blanket contractual liability, including tort liability of another assumed in a contract;
  - iv. Defense and/or indemnification obligations, including obligations assumed under this Contract;
  - v. Cross liability for additional insureds;
  - vi. Products/completed operations for a term of no less than 3 years, commencing upon acceptance of the work, as required by the Contract;
  - vii. Explosion, collapse, and underground hazards;
  - viii. Contractor means and methods; and
  - ix. Liability resulting from Section 240 or Section 241 of the New York State Labor Law, if applicable.
- c. The CGL policy, and any umbrella/excess policies used to meet the “Each Occurrence” limits specified above, must be endorsed to be primary with respect to the coverage afforded the Additional Insureds, and such policy(ies) shall be primary to, and non-contributing with, any other insurance maintained by the Department. Any other insurance maintained by the Department shall be excess of and shall not contribute with the Contractor’s or Subcontractor’s insurance, regardless of the “Other Insurance” clause contained in either party’s policy(ies) of insurance, if applicable.
- d. Data Breach/Cyber Liability Including Technology Errors and Omissions. The Contractor shall carry and maintain Data Breach/Cyber Liability, coverage in the amount of at least \$1,000,000 each occurrence including coverage for failure to protect confidential information and failure of the security of the Offeror’s computer systems or the Department systems due to the actions of the Offeror which results in unauthorized access to the Department or their data. If the Contractor provides technology services or products, the Contractor must also provide Technology Errors & Omissions Coverage. As this insurance is most often written on a claims-made basis the Contractor shall purchase, at its sole expense, extended Discovery Clause coverage of up to three (3) years after the work is completed if coverage is cancelled or not renewed.

Said insurance shall provide coverage for damages arising from, but not limited to the following:

- i. Breach of duty to protect the security and confidentiality of nonpublic proprietary corporate information;
- ii. Personally identifiable nonpublic information (e.g., medical, financial, or personal in nature in electronic or non-electronic form);
- iii. Privacy notification costs;
- iv. Regulatory defense and penalties;
- v. Website media liability; and
- vi. Cyber theft of customer's property, including but not limited to money and securities.

### **SECTION 13: LEGAL TERMS AND CONDITIONS**

13.1 All of the prices, terms, warranties and benefits granted by the Contractor herein are comparable to or better than the equivalent terms being offered by the Contractor to other customers using similar scope and volume of services. If, during the course of the Agreement, the Contractor enters into arrangements with any other customers providing services which are equal to or greater than those services to be provided under the Agreement at more favorable terms, the Agreement shall thereupon be deemed amended to provide the same to the Department.

### **SECTION 14: ENTIRE AGREEMENT**

14.1 The Agreement and the appendices 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.

(Remainder of this page intentionally left blank)

(Remainder of this page intentionally left blank)

Contract Number: **C000730**

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

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

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

**NEW YORK STATE  
DEPARTMENT OF CIVIL SERVICE**

**DIALOGDIRECT INC. dba  
HEALTHLOGIX**

<b>APPROVED</b> DEPT. OF AUDIT & CONTROL  Mar 03 2021 Melanie L Young  FOR THE STATE COMPTROLLER	Name:	<u>Rebecca A. Corso</u>
	Title:	<u>Deputy Commissioner</u>
	By:	<u>[Redacted]</u>
	Date:	<u>2/24/2021</u>

Name:	<u>[Redacted]</u>
Title:	<u>CFO</u>
By:	<u>[Redacted]</u>
Date:	<u>7/14/2020</u>

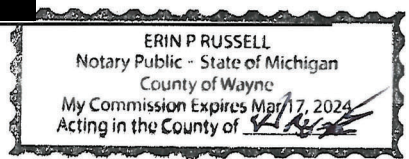
**CORPORATION ACKNOWLEDGMENT  
STATE OF } Michigan**

**Sworn Statement:**

**COUNTY OF } Washtenaw**

On the 17<sup>th</sup> day of June in the year 2020, before me personally appeared Daniel L. Corso, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he maintains an office at Town of Ann Arbor County of Washtenaw, State of MI; and further that: he is the CFO of Dialog Direct, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

**Notary Public** [Redacted]  
**Date:** 7/14/2020



Approved as to form: \_\_\_\_\_ Approved: \_\_\_\_\_

Letitia James  
ATTORNEY GENERAL

Thomas P. DiNapoli  
STATE COMPTROLLER

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

Date: \_\_\_\_\_ Date: \_\_\_\_\_

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.



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## **STANDARD CLAUSES FOR NYS CONTRACTS**

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

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

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

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the

Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

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

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

a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

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

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

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

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

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

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

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

\$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

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

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

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

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

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

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

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

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

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by

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

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

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

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

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

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

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

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and

women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

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

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

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

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

**22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

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

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

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

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

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

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

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

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

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

**New York State Department of Civil Service  
April 2020**

APPENDIX B - STANDARD CLAUSES FOR ALL DEPARTMENT CONTRACTS

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1. Headings and Captions:

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

2. Compliance with Laws:

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

3. Jurisdiction or Venue:

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

4. Summary of Policy and Prohibitions on Procurement Lobbying

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

5. Notice of Substantial Change in Contractor Status

In addition to the requirements of New York State Finance Law §138 (requiring the State's approval of subcontractors and assignments and/or conveyances), the Contractor shall notify the Department of any substantial change in the ownership or financial viability of the Contractor, its Affiliates, subsidiaries or divisions, or partners, in

writing immediately upon occurrence. "Substantial change" means: (i) sales, acquisitions, mergers or takeovers of the Contractor, its Affiliates, subsidiaries, divisions, or partners that result in a change in the controlling ownership or assets of such entity after the submission of the Bid or execution of Contract; (ii) entry of an order for relief under Title 11 of the United States Code; (iii) the making of a general assignment for the benefit of creditors; (iv) the appointment of a receiver of Contractor's business or property or that of its Affiliates, subsidiaries or divisions, or partners; or action by Contractor, its Affiliates, subsidiaries or divisions, or partners under any State insolvency or similar law for the purposes of its bankruptcy, reorganization, or liquidation; or (v) court ordered liquidation of Contractor, its Affiliates, subsidiaries or divisions, or partners.

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

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

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

#### 7. Severability

In the event that one or more of the provisions of the Contract shall for any reason be declared unenforceable by a court of competent jurisdiction under the laws or regulations in force, such provision(s) shall have no effect on the validity of the remainder of the Contract, which shall then be construed as if such unenforceable provision(s) was never contained in the Contract.

#### 8. Waiver of Breach

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

addition to, and not in limitation of, rights and obligations otherwise available at law or equity. No delay or omission to exercise any right, power or remedy accruing to either party upon breach or default by the other under this Contract shall impair any such right, power or remedy.

#### 9. Force Majeure

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

#### 10. Modification of Contract

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

#### 11. Change Request

At any time during the term of this Contract, the Department may make changes, subtractions or additions in any of the equipment, software, documentation, Project Services and/or other Deliverables within the general scope of work set forth in the Contract, consistent with pricing established under the terms of the Contract. All such changes shall be made using a mutually agreed upon form executed by the Parties and shall otherwise be in accordance with the terms and conditions of the Contract. If any such change causes an increase or decrease in pricing or the time required for the performance of the Contract, an equitable adjustment of the Contract amount and/or time of performance will be made on mutual agreement of the Parties, subject to the approval of the New York State Office of the State Comptroller and any applicable control agency, if required.

#### 12. Piggybacking

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

### 13. No Third-Party Beneficiaries

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

### 14. Work Outside of Scope of the Contract

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

### 15. Contract Payments

Payments for commodities received or Services rendered shall be in accordance with the Contract. All rates must be inclusive of any and all direct and indirect costs including contract administrator, clerical personnel, travel, computer charges, postage and all other expenses related to the engagement. The Department will not pay overtime rates for hours worked over 40 per week. The State's payment obligations shall be governed by the provisions of the New York State Finance Law ("SFL") Article 11-A.

The Contractor shall invoice the Department in accordance with the provisions set forth herein, for commodities or Services rendered, together with full supporting detail(s) to the State's satisfaction. Invoice must include the Contract number. Such invoice shall be emailed to [accountspayable@ogs.ny.gov](mailto:accountspayable@ogs.ny.gov). The subject line should include the Invoice Number and the term "Department of Civil Service". If mailing a paper copy of the invoice, submit it to the following address:

New York State Department of Civil Service  
DCS01  
c/o NYS OGS BSC Accounts Payable  
Building 5, 5th floor  
1220 Washington Avenue  
Albany, NY 12226-1900

### 16. Liability for Taxes

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

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

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

In addition to any requirements set forth in the Contract, the Contractor shall make available any documentation necessary to perform such reviews including the copying of the documentation. Documentation made available by the Contractor may include, but is not limited to, source documents, books of account, subsidiary records and supporting work papers, claim documentation and pertinent contracts and correspondence.

The audit provisions contained herein shall in no way be construed to limit the audit authority or audit scope of the Office of the State Comptroller as set forth in Appendix A of the Contract, Standards Clauses for All New York State Contracts, or any audit requirements related to the security of the Contractor's systems.

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

## 18. Independent Contractor

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

## 19. Subcontracting

If allowed in the solicitation, the Contractor may arrange for specified portions of its responsibilities to be subcontracted. The Contractor shall not in any way be relieved of any responsibility under the Contract by any subcontract. The Contractor shall be solely responsible to the Department for the acts or defaults of its Subcontractor(s) and of such Subcontractors' officers, agents, and employees, each of whom shall for this purpose, be deemed to be the agent or employee of the Contractor to the extent of its subcontract. Any deliverable provided or furnished by a Subcontractor shall be deemed for purposes of the Contract to be provided or furnished by the Contractor. The Contractor shall inform each Subcontractor fully and completely of all provisions and requirements established by the Contract and enter into a written subcontract. Such subcontract shall include the functional equivalent of the Contract, and include such clauses:

- That the work performed by the Subcontractor must be in accordance with the terms and conditions of this Contract.
- That nothing contained in such subcontract shall impair the rights of the Department or the State.
- That nothing contained in the subcontract shall create any contractual relationship between the Subcontractor and the Department or the State.
- That the State and Department shall have the same authority to audit the records of all Subcontractors as it does those of the Contractor.
- That Subcontractor shall cooperate with any investigation, audit, litigation or other inquiry related to the Solicitation or the resulting Contract.
- That Subcontractor shall maintain and protect against any unauthorized disclosure of records with respect to work performed under the subcontract in the same manner as required of the Contractor
- The Contractor shall require that the Subcontractor must pass through all terms and conditions of the Contract, including but not limited to Appendix A, to any lower tier subcontractors.
- Unless waived by the Department, each subcontract shall expressly name the State of New York through the Department as the sole intended third party beneficiary of such subcontract.

The Department reserves the right to review and approve or reject any subcontract with a Subcontractor, as well as any amendments to said subcontract(s). This right shall not make the Department or the State a party to any subcontract or create any right, claim, or interest in the Subcontractor or proposed Subcontractor against the Department.

The Department reserves the right, at any time during the term of the Contract, to verify that the written subcontract between the Contractor and Subcontractor(s) is in compliance with all of the provision of this Contract. In addition to other remedies allowed by law, the Department reserves the right to terminate the Contract for cause if an executed subcontract does not contain all of the required provisions.

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

## 20. Contractor Staff

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

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

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

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

## 21. Onboarding and Suitability Determinations

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

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

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

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

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

## 22. Separation of Duties

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

## 23. Dispute Resolution

Unless otherwise agreed to in writing by the Parties, any dispute raised by the Contractor concerning any question of fact or law arising under the Contract which is not disposed of by mutual agreement of the Parties shall be decided initially by the designee of the Commissioner ("Commissioner"). A copy of the written decision shall be furnished to the Contractor. The Parties shall proceed diligently with the performance of the Contract and shall comply with the provisions of such decision and continue to comply pending further resolution of any such dispute as provided herein.



The decision of the designee of the Commissioner shall be final and conclusive unless, within ten (10) Days from the receipt of such decision, the Contractor furnishes the Commissioner a written appeal. In the event of an appeal, the Commissioner shall promptly review the initial decision, and confirm, annul, or modify it. The decision of the Commissioner shall be final and conclusive unless, as determined by a court of competent jurisdiction, it violates one of the provisions of section 7803 of the Civil Practice Law and Rules ("Article 78"). Pending final decision of any Article 78 proceeding, the Parties shall diligently perform the Contract in accordance with the Commissioner's decision.

#### 24. Indemnification and Limitation of Liability

a. Indemnification:

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

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

This section is not subject to the limitation of liability provisions of the Contract.

b. Indemnification for Intellectual Property Infringement:

Contractor shall indemnify, defend, and hold the State harmless, without limitation, from and against any and all damages, expenses (including reasonable attorneys' fees and legal fees), claims, judgments, liabilities, and costs which may be assessed against the State in any action for infringement of a United States Letter Patent, or of any copyright, trademark, trade secret, or other third-party proprietary right in relation to the Services, products, documentation or deliverables furnished or utilized by Contractor under this Contract, provided that the State shall give Contractor: (i) prompt written notice of any action, claim, or threat of infringement suit, or other suit; (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense; and (iii) assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the State may require Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the State shall require. This paragraph shall not apply to that portion of any infringement claim which results from a material modification by the State, without Contractor's approval, of any products, documentation or deliverables furnished or utilized by Contractor pursuant to this Contract.

Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, when it determines that there is an issue involving a significant public interest. This section is not subject to the limitation of liability provisions of the Contract.

c. Limitation of Liability

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

d. No Indemnification by the State:

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

## 25. Warranties and Guarantees

a. Contract Deliverables: Contractor warrants and represents that the Services required by the solicitation and the Contract shall be performed or provided in accordance with all the terms and conditions, covenants, statements, and representations contained in the Contract. Contractor’s failure to meet pre-defined service levels may result in a credit or chargeback in an amount pre- determined by the Parties.

b. Product Performance: Contractor hereby warrants and represents that Products acquired by the State under this Contract conform to the manufacturer’s specifications, performance standards and Documentation and that the Documentation fully describes the proper procedure for using the Products.

c. Title and Ownership: Contractor warrants and represents that it has: (i) full ownership, clear title free of all liens; or (ii) the right to transfer or deliver specified license rights to any Products acquired by the State under the Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor shall indemnify the State and hold the State harmless from any damages and liabilities (including reasonable attorneys’ fees and costs) arising from any breach of Contractor’s warranties as set forth herein.

d. **Workmanship Warranty:** Contractor warrants and represents that all Services and deliverables shall meet the completion criteria set forth in the Contract, and that Services will be provided in a professional and workmanlike manner in accordance with the highest applicable industry standards.

e. **Personnel Eligible for Employment:** Contractor warrants and represents that all personnel performing Services under this Contract are qualified to provide Services and eligible for employment in the United States and shall remain so throughout the term of the Contract. Contractor shall provide such proof of compliance as is required by Department.

f. **Virus Warranty:** The Contractor represents and warrants that any Product acquired by the Department does not contain any known viruses. Contractor is not responsible for viruses introduced at the Department's site by third parties who are not Contractor Staff.

g. **Date/Time Warranty:** Contractor warrants that Product furnished pursuant to this Contract shall, when used in accordance with the product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes, or an acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

Where Contractor is providing ongoing Services, including but not limited to:

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

h. **Additional Warranties:** Where Contractor generally offers additional or more advantageous warranties than those set forth herein, Contractor shall offer or pass through any such warranties to the State.

i. **No Limitation of Rights:** The rights and remedies of the State provided in this clause are in addition to and do not limit any rights afforded to the State by any other clause of the Contract.

- j. Survival of Warranties: All warranties contained in the Contract shall survive termination of the Contract.
- k. No Implied Warranties: To the extent permitted by law, these warranties are exclusive and there are no other express or implied warranties or conditions, including warranties or conditions of merchantability and fitness for a particular purpose.

## 26. Ownership of and Title to Contract Deliverables

- a. Contractor acknowledges that it is commissioned by the State to perform the Project Services detailed in the Contract which may include the development of intellectual property by Contractor, its Subcontractors, partners, employees or agents for the State ("Custom Products"). Unless otherwise specified in writing in the Contract, upon the creation of such Custom Products, Contractor hereby conveys, assigns and transfers to the State the sole and exclusive rights, title and interest in the Custom Products, whether preliminary, final or otherwise, including all trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor, its agents, employees, or Subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed in performing Services under the Contract in the course of Contractor's business. The State may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of taking exclusive ownership and title to such Products. In such case, the State shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purpose(s) as stated in the Contract.
- b. Ownership of and Title to Existing Software:

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

Solicitation. With regards to third party software, the Contractor shall be responsible for obtaining these rights at its sole cost and expense.

## 27. Confidentiality and Non-Disclosure

### a. Confidentiality:

Except as may be required by applicable law or a court of competent jurisdiction, the Contractor, its officers, agents, employees, and subcontractors, if any, shall maintain strict confidence with respect to any "Confidential Information" to which the Contractor, its officers, agents, employees, and subcontractors, if any, have access. This requirement shall survive termination of the Contract. Contractor agrees that all officers, agents, employees and subcontractors, if any, shall be made aware of and shall agree to the terms of this Contract. Upon the request of the State or Department, all of Contractor's officers, agents, employees and subcontractors with access to Data shall cooperate in executing a written confidentiality/nondisclosure agreement and/or security addendum under applicable confidentiality and privacy laws, rules, and regulations or policies.

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

- i. information that is previously rightfully known to the receiving party without restriction on disclosure;
- ii. information that becomes, from no act or failure to act on the part of the receiving party, generally known in the relevant industry or is in the public domain; and
- iii. information that is independently developed by Contractor without use of Confidential Information of the State.

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

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

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

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

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

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

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

## 28. Freedom of Information Law

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

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

## 29. Data Ownership and Use

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

## 30. Termination

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

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

The Contract may be terminated by the Department for cause upon the failure of the Contractor to comply with the terms and conditions of the Contract, provided that the Department shall give the Contractor written notice. Such written notice will specify the Contractor's failure and the termination of the Contract. Termination shall be effective no earlier than thirty (30) Calendar Days after receipt of such notice unless the Contractor, in the opinion of the Department, has cured such failure. Such

cure period may be extended by the Department in writing. The Contractor agrees to incur no new obligations nor to claim for any expenses made after receipt of the notification of termination without the prior written approval of the Department. Upon termination for cause, the Department shall have the right to award a new contract to another contractor. Termination for cause shall create a liability upon the Contractor for actual damages incurred and for all reasonable additional costs incurred in reassigning the Contract.

- c. For Suspension or Delisting of Contractor's Securities:  
The State, in its sole discretion, may terminate the Contract or exercise such other remedies as shall be available under the Contract, at law or in equity if: the Contractor's securities are suspended or delisted by the New York Stock Exchange, the American Stock Exchange, or the NASDAQ, as applicable; the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets; or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors.
- d. For Vendor Responsibility Related Findings:  
The Department may, in its sole discretion, terminate the Contract if it finds at any time during the Contract term that the Contractor is non-responsible, or that any information provided in the Vendor Responsibility Questionnaire submitted with Contractor's Bid was materially false or incomplete, or if the Contractor fails to timely or truthfully comply with Department's request to update its Vendor Responsibility Questionnaire.
- e. Termination for Non-Responsibility:  
Upon written notice to the Contractor, and after a reasonable opportunity to be heard with the appropriate Department officials, the Contract may be terminated by the Commissioner at the Contractor's expense where the Contractor is determined to be non-responsible. In such an event, the Commissioner may complete the contractual requirements in any manner s/he may deem advisable and pursue legal or equitable remedies for the Contractor's breach.
- f. For Lack of Funds:  
The Contract may be terminated immediately in the event the Department determines that funds are unavailable. The Department agrees to provide notice to the Contractor as soon as it becomes aware that funds are unavailable in the event of termination under this paragraph. If the initial notice is via oral notification, the Department shall provide written notice immediately thereafter. The Department shall be obligated to pay the Contractor only for the expenditures made and obligations incurred by the



Contractor until such time as notice of termination is received, in writing, by the Contractor from the Department.

II. Mitigation of Costs:

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

31. Continuing Obligation to Remain Responsible

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity, including the submission of an updated Vendor Responsibility Questionnaire. The Contractor is required to promptly report to the Department any material changes in the information reported in its initial Vendor Responsibility Questionnaire.

32. Suspension of Work

The Department reserves the right to suspend any or all activities under the Contract, at any time, in the best interests of the State. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reasons for such suspension include but are not limited to, a budget freeze on State spending or declaration of emergency. Upon issuance of such notice, the Contractor shall comply with the suspension order. Contractor shall be paid for Services performed prior to suspension in accordance with the Contract. Such suspension will be lifted upon written notice to Contractor.

Nothing in this paragraph shall diminish the State's right to terminate the Contract as provided in the Contract.

33. Default

- a. If either party breaches a material provision of this Contract and such breach remains uncured for a period of thirty (30) days after written notice thereof from the other party specifying the breach, then the other party may, at its option, terminate this Contract in accordance with the Termination clause and exercise such other remedies as shall be available under this Contract, at law and/or equity.
- b. If, due to default that remains uncured for the period provided herein, a third party shall commence to perform Contractor's obligations under this Contract, the State

shall thereafter be released from all obligations to Contractor hereunder, including any obligation to make payment to Contractor, provided however that the State shall continue to be obliged to pay for any and all Services provided prior to any such date, and if any lump-sum payment has been made, the State shall be entitled to a pro-rata refund of such payment.

#### 34. General Provisions as to Remedies

- a. The Parties may exercise their respective rights and remedies at any time, in any order, to any extent, and as often as deemed advisable, without regard to whether the exercise of one right or remedy precedes, concurs with or succeeds the exercise of another. A single or partial exercise of a remedy shall not preclude a further exercise of the right or remedy or the exercise of another right or remedy from time to time. No delay or omission in exercising a right or remedy, or delay, inaction, or acquiescence to, an event otherwise constituting a breach or default under the Contract.
- b. In addition to any other remedies available to the State under the Contract and state and federal law for Contractor's default, the State may choose to exercise some or all of the following:
  - i. Suspend, in whole or in part, payments due to Contractor under this Contract;
  - ii. Pursue equitable remedies to compel Contractor to perform;
  - iii. Apply Service Credits against amounts due and owing by the State under the Contract; or
  - iv. Require Contractor to cure deficient performance or perform the requirements of the solicitation at no charge to the State.

#### 35. Cooperation with Third Parties

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

#### 36. Publicity and Communications

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

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

### 37. Accessibility

a. Web Accessibility:

Any web-based information and applications development, or programming delivered pursuant to the Contract shall comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Web-Based Information and Applications as such policy may be amended, modified or superseded, which requires that State Agency web-based information and applications are accessible to persons with disabilities. Web-based information and applications must conform to New York State Enterprise IT Policy NYS-P08-005 as determined by quality assurance testing. Such quality assurance testing will be conducted by Contractor and the results of such testing must be satisfactory to Department before web-based information and applications will be considered a qualified deliverable under the Contract or Procurement.

b. Language Access for Individuals with Limited English Proficiency:

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

### 38. Branding and Universal Web Navigation

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

### 39. Migration

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

### 40. Disclosure of Breach

Notwithstanding on any other provision of this Contract or requirements of law or regulation, the Contractor shall provide notice to the Department as soon as possible following the Contractor's discovery or reasonable belief that there has been

unauthorized disclosure or loss of sensitive or Confidential Information (“Security Incident”).

- a. Within twenty-four (24) hours of the discovery or reasonable belief of a Security Incident, the Contractor shall provide a written report to the Department detailing the circumstances of the incident, which includes at a minimum:
  - i. A description of the nature of the Security Incident;
  - ii. The type of Department information involved including the categories of data;
  - iii. Who may have obtained the Department information;
  - iv. What steps the Contractor has taken or shall take to investigate the Security Incident;
  - v. What steps the Contractor has taken or shall take to mitigate any negative effect of the Security Incident; and
  - vi. A point of contact for additional information.
- b. Each day thereafter until the Contractor’s investigation is complete or otherwise directed by the Department, the Contractor shall provide the Department with a written report regarding the status of the investigation and the following additional information as it becomes available:
  - i. Who is known or suspected to have gained unauthorized access to the Department’s information;
  - ii. Whether there is any knowledge if the Department information has been used in an unauthorized fashion or compromised;
  - iii. What additional steps the Contractor has taken or shall take to investigate the Security Incident;
  - iv. What steps the Contractor has taken or shall take to mitigate any negative effect of the Security Incident; and
  - v. What corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.
- c. Contractor shall also take immediate and necessary steps needed to restore the information security system to prevent further breaches.
- d. The Contractor shall confer with the Department regarding the proper course for the investigation and risk mitigation. The Department reserves the right to conduct an independent investigation of any Security Incident, and should the Department choose to do so, the Contractor shall cooperate fully by making resources, personnel, and systems access available to the Department and the Department’s authorized representative(s) who may include the New York State Chief Information Security Office.
- e. Subject to review and approval of the Department, the Contractor shall, at its own cost, provide notice that satisfies the requirements of applicable law or regulation to

individuals whose personal, confidential, or privileged data were compromised or likely compromised as a result of the Security Incident as well as notice to any regulatory authority as required under the Contract or applicable law or regulation. If the Department, in its sole discretion, elects to send its own separate notice, then all costs associated with preparing and providing notice shall be reimbursed to the Department by the Contractor. If the Contractor does not reimburse such costs within thirty (30) calendar days of the Department's written request, the Department shall have the right to collect such costs including as a set-off against moneys due the Contractor.

- f. The Department reserves the right to require the Contractor to provide commercially standard credit monitoring for any and all individuals affected by the data breach at the sole expense of the Contractor for a period not to exceed 12 months, which shall begin 30 days following the notice of offer from the Contractor of such credit monitoring to those affected individuals, which shall be within a reasonable time following the identification of such affected individuals. The Department reserves the right to require notice by regular or electronic mail.

This section is not subject to the limitation of liability provisions of the Contract.

## Appendix C

### New York State Department of Civil Service Information Security Requirements April 2020

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

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

#### **Variable Clauses**

The following Data Classification and Contractor Data retention period is specific to this Agreement:

1. The Department has determined that the Data, System or application which the Contractor will either host, maintain or have access to has an impact level of: Confidentiality = Moderate, Integrity = Moderate, and Availability = Moderate, and requires the associated baseline controls (see [https://its.ny.gov/sites/default/files/documents/nys-s14-003\\_information\\_security\\_controls\\_1.pdf](https://its.ny.gov/sites/default/files/documents/nys-s14-003_information_security_controls_1.pdf)).
2. The Department has determined that the period of time that the Contractor must provide the Department continued access to Data beyond the expiration or termination of the Agreement is no less than one hundred and eighty (180) days.

#### **Definitions**

All capitalized terms in this Appendix that are not defined herein will have the meaning as set forth in Appendix B, Standard Clauses for All Department Contracts, or if not defined in Appendix B, the meaning as defined in 45 C.F.R. Parts 160-164.

#### **1. Compliance**

Contractor agrees to preserve the confidentiality, integrity and accessibility of Data with administrative, technical and physical measures that conform to federal, State and Department mandates, and the security controls as stated herein, based upon the nature of the Project Services provided, the Data involved, and/or the location where such Project Services are provided. Accordingly, Contractor warrants, covenants and

represents that it shall fully comply with all New York State Information Technology Security Policies, Standards and Procedures published by the New York State Chief Information Security Office at <https://its.ny.gov/eiso/policies/security>, as amended from time to time, that are applicable to the Project Services being provided by Contractor. Contractor is responsible for understanding which policies and state or federal laws apply to the Project Services and the Data in scope for the Agreement. If the requirements set forth herein are not the same as the New York State enterprise security policy, standard or procedures, then the more restrictive requirement applies. Contractor is responsible for assessing and monitoring Subcontractor control environments for compliance with the standards as documented herein.

## **2. Acceptable Use of Information Technology Resources**

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

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

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

## **3. Information Security Program**

- 3.1. Contractor must maintain a written Information Security Program ("WISP") including documented policies, standards, and operational practices that meet or exceed the requirements and controls set forth herein to the extent applicable to the Project Services and identify an individual within the organization responsible for its enforcement. Contractor's WISP shall address, at a minimum, all security requirements as listed in these requirements, as amended from time to time, and comply with all state and federal data security and privacy laws applicable to the Department. This documentation will be reviewed by Contractor's security official, or its designee, at least annually and

shall be updated periodically with changes to organization, technology, or Services. When implementing security controls Contractor shall take a risk-based approach. Any control exceptions which represent risk will be formally documented, monitored, and periodically reviewed.

- 3.2. Upon request by the Department, Contractor's WISP shall be made available to and reviewed by the Department or the Department's representative. At the Department's request and at no cost to the Department, Contractor shall make commercially reasonable modifications to its WISP or to its data security controls in order to conform to the requirements set forth herein, and the Department reserves the right, in its sole discretion, to terminate Contractor's access to Confidential Information until such time as Contractor has made such modifications to its WISP or data security controls. Contractor shall notify the Department in writing of any changes to systems, facilities or WISP controls affecting Confidential Information. This notification should set forth in detail how such changes will impact the Confidential Information.
- 3.3. Contractor shall apply appropriate sanctions against Contractor Staff who fail to comply with security policies and procedures.
- 3.4. Contractor shall have processes and procedures in place so that Security Incidents will be reported through appropriate communications channels as quickly as possible. Contractor shall periodically test, review, and update such processes and procedures. All Contractor Staff shall be made aware of their responsibility to report any Events prior to being granted access to any Confidential Information. If at any time during the Agreement, Contractor becomes aware of an Event or that it or any of its Subcontractors will or do not meet the obligations described within these requirements, Contractor will immediately notify the Department.
- 3.5. Contractor shall periodically conduct an accurate and thorough assessment of the potential risks and vulnerabilities to the confidentiality, integrity, and Availability of Confidential Information. The assessment must be reviewed by Contractor's security official and used to inform the Contractor's information security program.
- 3.6. Upon request, the Contractor shall identify to the Department the security official who is responsible for the development and implementation of the Contractor's policies and procedures.

#### **4. Right to Assess, Audit and Certify**

- 4.1. The Department, or its designated agents, may assess or audit the effectiveness of Contractor's compliance with requirements herein.



- 4.2. Upon request, Contractor shall complete a security controls assessment conducted by the Department or its designated agent (“Security Assessment”). To the extent that the security controls assessment identifies any risks or deficiencies for which remediation is required, such remediation requirements or compensating controls (and the timeframes within which the remediation requirement or compensating control must be successfully implemented) will be provided in writing to the Contractor. Contractor’s failure to complete any remediation requirements within the required timeframe shall be deemed to be a material breach of the Agreement.

Where the Contractor is a Business Associate, or hosts, maintains or has access to Department Protected Health Information, certification in the HITRUST Common Security Framework (CSF) is required. The Department, in its discretion, may accept a comparable industry accepted security assessment certification in lieu of a HITRUST Common Security Framework (CSF) certification.

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

4.2.2. If the Contractor is without a HITRUST CSF certification as of the Effective Date of the Agreement, Contractor shall:

- Complete and provide to the Department a HITRUST CSF Self-Assessment Report no later than 90 days after the Effective Date of the Agreement; and
- Obtain and provide to the Department a HITRUST CSF Validated Report no later than 18 months after the

- Effective Date of the Agreement; and
  - Obtain and provide to the Department a HITRUST CSF certification and associated documentation, including but not limited to complete validated reports and corrective action plans, no later than 24 months after the Effective Date of the Agreement.
- 4.2.3. If Contractor has begun the process of obtaining a HITRUST CSF Certification before the Effective Date of the Agreement, then Contractor represents and warrants to the Department that all corrective action plans that are necessary to obtain a HITRUST CSF Validated Report and/or HITRUST CSF Certification and that have been identified to Contractor prior to the Effective Date shall be communicated to the Department and documented in writing to the Department.
- 4.2.4. Contractor shall within 30 days of identification report to the Department any findings through the HITRUST engagement that materially impacts Confidential Information. In addition, the Contractor will provide the associated corrective action plans identified during any self-assessment or third-party assessment, including any assessment related to Contractor's independent certification/attestation. Contractor will provide the Department with any further Information associated with such findings, as reasonably requested by the Department.
- 4.2.5. If at any time during the Agreement, the CSF Certification is withdrawn for any reason, Contractor will contact the Department within 24 hours of learning of the issue to provide information and remediation plans regarding the withdrawal.
- 4.3. From time to time Contractor may be requested to respond to, inform and provide updates regarding specific high-risk security gaps or exposures that exist for new or emerging security vulnerabilities that are made publicly known for systems, applications, hardware devices, etc. In all instances Contractor will provide a response to any Department inquiry within five business days and will provide specific details as to the questions asked to ensure that the Department can appropriately evaluate the risk or exposure to the Confidential Information.

## **5. Encryption**

- 5.1. Contractor shall apply encryption methodology that, at minimum, conforms to the Federal Information Processing Standards Publication 140- 2 Security Requirements for Cryptographic Modules and applicable state and federal regulations (“Approved Encryption”).
- 5.2. Cryptographic key management procedures must be documented and include references to key lifecycle management (including provisioning, distribution, and revocation) and key expiration dates.
- 5.3. Access to encryption keys must be restricted to named administrators. Encryption keys must be protected in storage. For example, methods of acceptable key storage include encrypting keys or storing encryption keys within a hardware security module (HSM). Data-encrypting keys should not be stored on the same systems that perform encryption/decryption operations.
- 5.4. Confidential Information must be encrypted while in transit and at rest across at least the following types of assets:
  - Public shared Networks
  - Non-wired Networks
  - Cloud Services
  - Desktop and portable computing devices
  - Mobile devices
  - Portable media
  - Back-ups
  - Application or Network servers
  - ‘Plug & play’ storage devices

## **6. Network and Systems Security**

- 6.1. Contractor shall utilize and maintain a commercially available, industry standard malware detection program which includes an automatic update function to ensure detection of new malware threats.
- 6.2. Contractor shall maintain an intrusion detection or prevention system that detects and/or prevents unauthorized activity traversing the Network.
- 6.3. Contractor shall have technical controls to detect, alert, and prevent the unauthorized movement of Data from Contractor’s control (commonly referred to as Data Loss Prevention).
- 6.4. Networks or applications that contain Confidential Information must be separated from public Networks by a firewall to prevent unauthorized access from the public Network.

- 6.5. At managed interfaces, Network traffic is denied by default and allowed by exception (i.e., deny all, permit by exception).
- 6.6. Contractor shall establish security and hardening standards for Network devices, including Firewalls, Switches, Routers, Servers, and Wireless Access Points (baseline configuration, patching, passwords, and access control).
- 6.7. Web content filtering must be in place to restrict external webmail, instant messaging, file sharing and other Data leak vectors for any Contractor Staff with direct or indirect access to Confidential Information.
- 6.8. Quarterly vulnerability scans must be performed, and intrusion detection and identity management systems must be installed and monitored on all systems and components that handle, process, or store Confidential Information. Upon request, report summaries, including confirmation of remediation for vulnerabilities identified as high- or medium-risk, must be provided to Department.
- 6.9. At a minimum, Contractor shall engage a qualified third party to perform annual penetration testing of Contractor's Networks containing Confidential Information. The scope of the penetration testing must, at a minimum, include all internal/external systems, devices and applications that are used to process, store, or transmit Confidential Data, physical security controls for all applicable facilities, and social engineering tests. Contractor must provide the Department with summary results and a remediation plan at the Department's request.
- 6.10. If Contractor provides products or Services related to the Agreement through a Department portal or mobile applications, especially those which are internet-facing, or use Department domains, are subject to Department scanning and assessments. Contractor agrees to remediate vulnerabilities identified during this process in a manner and timeline acceptable to the Department.
- 6.11. Contractor shall ensure that no unencrypted Confidential Information is stored in any system that is internet facing.
- 6.12. Contractor shall use secure means (i.e. HTTPS, FTPS) for all electronic transmission or exchange of System, user and application information with the Department.

## **7. Mobile Device Security Controls**

- 7.1. Contractor must have a documented mobile device policy that includes a documented definition for mobile devices and the acceptable usage

and security requirements for all mobile devices.

- 7.2. Where Contractor permits Bring Your Own Device (BYOD), Contractor must have a BYOD policy that defines the device and eligibility requirements for BYOD usage in the event that Confidential Information will be viewed or stored on devices that are not Contractor-issued mobile devices.
- 7.3. Contractor must post and communicate the mobile device policy and requirements through Contractor's security awareness and training program.
- 7.4. Contractor must have a centralized mobile device management solution (MDM) deployed to all mobile devices that are permitted to store, transmit, or process Confidential Information.
- 7.5. Contractor's mobile device policy must require the use of encryption for either the entire device or for Confidential Information and must be enforceable through Contractor's MDM solution or other technical controls.
- 7.6. Contractor must enforce password policies for Contractor-issued mobile devices and/or BYOD mobile devices using Contractor's MDM solution or other technical controls.
- 7.7. Contractor's Information Technology department must provide remote wipe or corporate Data wipe for all mobile devices in the event that Confidential Information will be viewed or stored on mobile devices.

## **8. System and Application Controls**

- 8.1. All Confidential Information must be securely stored at all times to prevent loss and unauthorized access or disclosure.
- 8.2. Laptop and workstation systems that access Confidential Information remotely must utilize endpoint protection which includes a personal firewall and anti-malware protection.
- 8.3. Operating systems and application software used must be currently supported by the manufacturer.
- 8.4. Current versions of operating system and application software must be maintained, and patches applied in a timely manner for all systems and applications that receive, maintain, process, or otherwise access Confidential Information.

- 8.5. Confidential Information must not be used in any non-production environment such as testing or quality assurance unless de-identification of the Data has been performed. In the event that de-identification is not practical or feasible, compensating controls must be in place protecting the Data to the same level of protection as afforded to the production environment. Confidential Information must not be placed into a non-production cloud computing environment.
- 8.6. Confidential Information must be segmented from non-Department Information so that appropriate controls are in place to identify the Data as Department's in all instances, including backup and removable media, and to appropriately restrict access only to users authorized to view the Data. Logical separation must allow Data to be deleted when it is no longer required.
- 8.7. Logical controls, virtual machine zoning, virtualization security and segregation must be in place to help prevent attacks and exposure in multi-tenancy environments containing Confidential Information.
- 8.8. Contractor shall maintain an asset management system which records the movement of hardware and electronic media and any persons responsible therefore.

## **9. Software Development Lifecycle**

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

## **10. Physical Controls for the Protection of Confidential Information**

- 10.1. All Confidential Information received or created in paper form must be protected from viewing by unauthorized persons.
- 10.2. A clean desk policy will be enforced to ensure proper safeguarding of all hard copy Confidential Information.
- 10.3. Visitor logs documenting all individuals who are not Contractor Staff who gain access to the facility where Confidential Information is processed will be maintained.
- 10.4. Confidential Information shall not leave control of the Contractor without the written approval of Department.
- 10.5. Servers, enterprise data storage devices, backup tapes and media, and other computing devices that contain Confidential Information used to support Network communications must be located in a secure and restricted access location.
- 10.6. Monitoring cameras (e.g., CCTVs) must monitor ingress and egress to sensitive areas within the facility. The monitoring equipment (e.g., CCTV) feed must be monitored either internally or externally by a qualified team. Alerting procedures must be defined and notification performed to qualified Contractor personnel. Processes for retention and review of security logs (e.g., access and visitor logs, CCTV) must be in place. Cameras must be positioned in a way that Confidential Information is not readable on screens and/or on CCTV recordings or screen captures.
- 10.7. When investigation of an incident or Breach is required, all audit trails and CCTV recordings shall be made available to Department upon request and in a timely manner.

## **11. Access Control**

- 11.1. Prior to gaining access to Confidential Information, Contractor Staff will have appropriate background checks completed in compliance with state and federal law. See Standard Clauses for All Department Contracts (Appendix B), Onboarding and Suitability Determinations.
- 11.2. Security awareness training will be completed by Contractor Staff prior to access being granted to Confidential Information, and then completed on an annual basis going forward so long as access to Confidential Information continues. This training should include, at a minimum, guidance on defending against malware, protecting passwords, monitoring and reporting system notifications, social engineering, and handling sensitive Data. The Department may require Contractor Staff to complete Department specific security

training at no additional cost to the Department.

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



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

11.13. All identity credentialing, authentication, Authorization, and access control events must be logged, and those logs are subject to periodic audit by the Department. At a minimum, the logs of all specified success and failure events associated with identity and access management in the computing environment it manages must be produced. These logs must then be archived for at least twelve months. These archived logs must be searchable and or discoverable.

## **12. Data Protection**

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

## **13. Physical Data Transport**

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

## **14. Data Return and Destruction**

At the expiration or termination of the Agreement, at the Department's option, the Contractor must provide the Department with a copy of the Data, including metadata and attachments, in a mutually agreed upon, commercially standard format. The Contractor must provide the Department continued access to the Data beyond the expiration or termination of the Agreement for the period designated in Variable section of Appendix C. Thereafter, except for Data required to be maintained by law or this Agreement, Contractor shall destroy Data from its systems and wipe all its data storage devices to eliminate any and all Data from Contractor's systems. The sanitization

process must comply with New York State Security Policy NYS-S13-003. If immediate purging of all data storage components is not possible, the Contractor will certify that any Data remaining in any storage component will be safeguarded to prevent unauthorized disclosures. Contractor must then certify to the Department, in writing, that it has complied with the provisions of this paragraph.

#### **15. Offshore Security Requirement**

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

#### **16. Contingency Planning**

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

#### **17. Incident Response**

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

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

#### **18. Payment Card Industry Data Security Standard**

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

#### **19. Litigation Holds**

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

## APPENDIX C-1

### Glossary For Appendix B and Appendix C April 2020

Term	Definition
Agreement	See Contract.
Authorization	Access privileges granted to a user, program, or process or the act of granting those privileges.
Availability	The extent to which information is operational, accessible, functional and usable upon demand by an authorized entity (e.g., a system or user).
Breach	Acquiring of information by a person without valid authorization or through unauthorized acquisition.
Contractor	The entity that has been awarded a contract and has executed a Contract with the State. Also referred to as "Vendor."
Contractor Staff	For purposes of this contract "Contractor Staff" includes all officers, employees, agents, consultants and/or sub-contractors of the Contractor who shall perform Project Services under this Contract or have access to Data.
Cloud Service	Cloud Service shall mean any Product or Service sold as an "as a service" offering and has one or more of the following characteristics: (a) User Data is transmitted, acted upon, or stored on equipment not owned by the User; (b) Allows a Contractor access to User Data from a location other than the User's premises; or (c) Allows a User access to data not owned by the User which access may or may not result in the collection of User Data. (see also Hosted Application)
Continental United States of America (CONUS)	The 48 contiguous States, and the District of Columbia.
Contract	The writings that contain the agreement of the Department and the Contractor setting forth the legal obligations of the Parties as determined by the applicable rules of law.
Data	Any information, analytic derivatives, formula, algorithms, or other content that the Department or State may provide to the Contractor pursuant to this Contract. Data includes, but is not limited to, any of the foregoing that the Department and/or Contractor (i) uploads to a Cloud Service, and/or (ii) creates and/or modifies using a Cloud Service.
Deliverable	All Services or products created during the performance of the Project Services hereunder or otherwise identified as a "Deliverable". A Deliverable is a building block of an overall project. For the purposes of this Contract, a deliverable shall

## APPENDIX C-1

### Glossary For Appendix B and Appendix C April 2020

	not be set forth as a status report, meeting attendance, a block of staff hours, or an invoice submission.
Department or DCS or CS	NYS Department of Civil Service
Hosted Application	<p>A Hosted Application is a software as a service (SaaS) solution that allows users to execute and operate a software application entirely from the cloud on a recurring subscription basis.</p> <p>A Hosted Application is hosted and powered from the remote cloud infrastructure and are accessed globally through the Internet. It provides the same functionality as locally installed software but can be updated more easily.</p> <p>A Hosted Application may also be known as Internet-based application, Web application and online application.</p>
Event	Any observable occurrence in a system and/or network that may indicate that a Security Incident is occurring or has occurred.
Information	Any representation of facts, concepts or instructions created, stored (in temporary or permanent form), filed, produced or reproduced, regardless of the form or media. Information may include but is not limited to the data contained in reports, files, folders, memoranda, statements, examinations, transcripts, images or communications. Information may be electronic or hard copy.
Licensed Software	Licensed software includes ancillary products, error corrections, upgrades, enhancements or new releases, and any deliverables due under a maintenance or service contract (e.g. patches, fixes, PTFs, programs, code or data conversion, or custom programming).
Licensee	Licensee acquires product from the Contractor by execution of a license in accordance with the terms and conditions of the Contract.
Licensor	A Licensor is a contractor who transfers rights in proprietary Product in accordance with the rights and obligations specified in the Contract.
Network	Multiple devices (e.g. computers) that are linked or communicate with one another.
Personally Identifiable Information (PII)	As defined in NIST Special Publication 800-122 "Guide to Protecting the Confidentiality of Personally Identifiable Information (PII)".

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### Glossary For Appendix B and Appendix C April 2020

Personal information	Shall have the same meaning as defined in State Technology Law §202. This shall mean any information concerning a natural person which, because of name, number, symbol, mark or other identifier, can be used to identify that natural person.
Private Information	Any information where unauthorized access, disclosure, modification, destruction or disruption of access to or use of such information could severely impact the Department, its critical functions, its employees, its customers, third parties, or citizens of New York. This term shall be deemed to include, but is not limited to, the information encompassed in existing statutory definitions.
Project Services	See Service or Services.
Regulated Data	Data that is subject to federal and state laws, regulations, policies, standards and guidelines regarding its protection, storage, access, use, handling, disclosure, and destruction.
Security Incident	A Security Incident is a violation or imminent threat of violation of computer security policies, acceptable use policies, or standard security practices. A Security Incident is also defined as any Event that adversely affects the confidentiality, integrity, or Availability of a System and its Data. See NYS ITS Policy NYS-S13-005 or its successor for additional information.
Service or Services	Shall have the same meaning as defined in State finance Law §160. This shall mean the performance of a task or tasks and may include a material good or a quantity of material goods, and which is the subject of any purchase or other exchange.
Solicitation	Writings by the State setting forth the scope, terms, conditions and technical specifications for a procurement of Product.
State or NYS	State of New York.
State Agency	State agency or state agencies means all state departments, boards, commissions, offices or institutions but excludes, however, for the purposes of subdivision five of section three hundred fifty-five of the education law, the state university of New York and excludes, for the purposes of subdivision a of section sixty-two hundred eighteen of the education law, the city university of New York. Furthermore, such term shall not include the legislature or the judiciary.
Subcontractor	“Subcontractor” means any individual or legal entity (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) who has entered into a contract, express or implied, for the performance of a portion of the Contract with a Contractor.

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### Glossary For Appendix B and Appendix C April 2020

System	An interconnected set of information resources under the same direct management control that shares common functionality. A system normally includes hardware, software, applications, and communications.
Technology	Shall have the same meaning as defined in Executive Law, § 205(5). It is a good, service, or good and service that results in a digital, electronic or similar technical method of achieving a practical purpose or in improvements in productivity, including but not limited to, information management, equipment, software, operating systems, interface systems, interconnected systems, telecommunications, data management, networks, and network management, consulting, supplies, facilities, maintenance and training. The term "Technology" shall be deemed to include all tasks and products encompassed within the term "services", as defined in State Finance Law, § 160 (7).
Virus	Any computer code, whether or not written or conceived by Contractor, that disrupts, disables, harms, or otherwise impedes in any manner the operation of the Product, or any other associated software, firmware, hardware, or computer system (such as local area or wide-area networks), including aesthetic disruptions or distortions, but does not include security keys or other such devices installed by Product manufacturer. Virus shall also include any malware, adware, or other computer code, whether or not written or conceived by Contractor, that allows data or metrics to be copied, redirected, or modified without the express consent of DCS.

## Appendix D

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

#### **I. General Provisions**

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

#### **II. Contract Goals**

- A. For purposes of this Contract, the Department hereby establishes an overall goal of **0 percent** for MWBE participation, **0 percent** for New York State-certified minority-owned business enterprise (“MBE”) participation and **0 percent** for New York State-certified women-owned business enterprise (“WBE”) participation (collectively, “MWBE Contract Goals”) based on the current availability of MBEs and WBEs.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section II-A hereof, the Contractor should reference the directory of MWBEs at the following internet address: <https://ny.newnycontracts.com>.

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

- C. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25percent of the total value of the contract.
- D. The Contractor must document "good faith efforts," pursuant to 5 NYCRR § 142.8, to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. Such documentation shall include, but not necessarily be limited to:
  - 1. Evidence of outreach to MWBEs;
  - 2. Any responses by MWBEs to the Contractor's outreach;
  - 3. Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
  - 4. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the Department with MWBEs; and
  - 5. Information describing specific steps undertaken by the Contractor to reasonably structure the Contract scope of work to maximize opportunities for MWBE participation.

### III. Equal Employment Opportunity ("EEO")

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.
- B. In performing the Contract, the Contractor shall:
  - 1. Ensure that each contractor and subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.



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2. The Contractor shall submit an EEO policy statement to the Department within seventy-two (72) hours after the date of the notice by the Department to award the Contract to the Contractor.
3. If the Contractor, or any of its subcontractors, does not have an existing EEO policy statement, the Department may require the Contractor or subcontractor to adopt a model statement (see Appendix D-1 Equal Employment Opportunity Policy Statement).
4. The Contractor's EEO policy statement shall include the following language:
  - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
  - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
  - c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
  - d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

### C. Form EEO-100 - Staffing Plan

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

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### D. Form EEO-101 - Workforce Utilization Report

1. The Contractor shall submit a Workforce Utilization Report, and shall require each of its subcontractors to submit a Workforce Utilization Report, in such form as shall be required by the Department on a Quarterly basis during the term of the Contract.
  2. Separate forms shall be completed by the Contractor and any subcontractors.
  3. Pursuant to Executive Order #162, contractors and subcontractors are also required to report the gross wages paid to each of their employees for the work performed by such employees on the contract on a quarterly basis.
- E. The Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

### IV. MWBE Utilization Plan

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

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### V. Waivers

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

### VI. Quarterly MWBE Contractor Compliance Report

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

### VII. Liquidated Damages - MWBE Participation

- A. Where the Department determines that the Contractor is not in compliance with the requirements of this Appendix and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to the Department liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
  - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
  - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

## Appendix D

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



Department of  
Civil Service

## MWBE – EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

### M/WBE AND EEO POLICY STATEMENT

I, DAWN CORSIGLIA, on behalf of (awardee/contractor) DialogDirect, Inc. agree to adopt the following policies with respect to the project being developed or services rendered at the New York State Department of Civil Service.

#### M/WBE

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

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

#### EEO

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.

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

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.

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

(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract



Department of Civil Service

**MWBE – EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

Agreed to this 14<sup>th</sup> day of July, 2020

By [Redacted Signature]

Print: DAWN CORSIGLIA

Title: CEO

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

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

**M/WBE Contract Goals**

0 percent Minority and Women’s Business Enterprise Participation

0 percent Minority Business Enterprise Participation

0 percent Women’s Business Enterprise Participation

\_\_\_\_\_  
(Authorized Representative)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## Appendix E

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

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”), thereby further integrating such businesses into New York State’s economy. The Department recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of the Department’s contracts.

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

For purposes of this procurement, the Department conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor.

Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/veterans/>

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

## APPENDIX F

### **NYS Department of Civil Service**

#### **Employee Benefits Division HIPAA Business Associate Requirements June 2013**

This Appendix sets forth the HIPAA Business Associate requirements incumbent upon the Contractor in its provision of services to and on behalf of the Employee Benefits Division of the New York State Department of Civil Service (EBD), insofar as the Contractor creates, receives, maintains, transmits, or otherwise accesses, uses, or discloses individually identifiable health information on behalf of the EBD in the course of the Contractor's delivery of services under the Contract.

- I. Definitions. For purposes of this Appendix to the contract:
  - A. "Business Associate" shall mean the Contractor.
  - B. "Covered Program" shall mean the Department of Civil Service Employee Benefits Division (EBD).
  - C. Other terms used, but not otherwise defined, in this Appendix shall have the same meaning as those terms in the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act ("HITECH") and implementing regulations, including those at 45 CFR Parts 160 and 164.
- II. Obligations and Activities of Business Associate.
  - A. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the contract or as required by law.
  - B. Business Associate agrees to use the appropriate administrative, physical and technical safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by the contract and to comply with the security standards for the protection of electronic protected health information in 45 CFR Part 164, Subpart C. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate inconsistent with or in violation of the requirements of the contract.
  - C. Business Associate agrees to report to the DCS as soon as reasonably practicable any use or disclosure of the Protected Health Information not



provided for by the contract of which it becomes aware. Business Associate also agrees to report to the DCS any Breach of Unsecured Protected Health Information of which it becomes aware. Such report shall include, to the extent possible:

1. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
  2. A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
  3. Any steps individuals should take to protect themselves from potential harm resulting from the breach;
  4. A description of what Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches; and
  5. Contact procedures for the DCS to ask questions or learn additional information.
- D. Business Associate agrees, in accordance with 45 CFR § 164.502(e)(1)(ii), to ensure that any Subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of the Business Associate agree to the same restrictions and conditions that apply to Business Associate with respect to such information.
- E. Business Associate agrees to provide access, at the request of the DCS, and in the time and manner designated by the DCS, to Protected Health Information in a Designated Record Set, to the DCS in order for the DCS to comply with 45 CFR § 164.524.
- F. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the DCS directs in order for the DCS to comply with 45 CFR § 164.526.
- G. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for the DCS to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528; and Business Associate agrees to provide to the DCS, in time and manner designated by the DCS, information collected in accordance with the contract, to permit the DCS to comply with 45 CFR § 164.528.
- H. Business Associate agrees, to the extent the Business Associate is to carry out the DCS' obligation under 45 CFR Part 164, Subpart E, to

comply with the requirements of 45 CFR Part 164, Subpart E that apply to the DCS in the performance of such obligation.

- I. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, the DCS available to the DCS, or to the Secretary of the federal Department of Health and Human Services, in a time and manner designated by the DCS or the Secretary, for purposes of the Secretary determining the DCS' compliance with HIPAA, HITECH and 45 CFR Parts 160 and 164.

III. Permitted Uses and Disclosures by Business Associate.

- A. Except as otherwise limited in the contract, Business Associate may only use or disclose Protected Health Information as necessary to perform functions, activities, or services for, or on behalf of, the DCS as specified in the contract.
- B. Business Associate may use Protected Health Information for the proper management and administration of Business Associate.
- C. Business Associate may disclose Protected Health Information as required by law.

IV. Term and Termination.

- A. This Appendix shall be effective for the term effective for the contract, after which time all of the Protected Health Information provided by the DCS to Business Associate, or created or received by Business Associate on behalf of the DCS, shall be destroyed or returned to the DCS; provided that, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information in accordance with the terms in this Appendix.
- B. Termination for Cause. Upon the DCS' knowledge of a material breach by Business Associate, the DCS may provide an opportunity for Business Associate to cure the breach and end the violation or may terminate the contract if Business Associate does not cure the breach and end the violation within the time specified by the DCS. Alternatively, the DCS may immediately terminate the contract if Business Associate has breached a material term of the contract and cure is not possible.
- C. Effect of Termination.

1. Except as provided in paragraph (c)(2) below, upon termination of the contract, for any reason, Business Associate shall return or destroy all Protected Health Information received from the DCS, or created or received by Business Associate on behalf of the DCS. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
2. In the event that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to the DCS notification of the conditions that make return or destruction infeasible. Upon mutual agreement of Business Associate and the DCS that return or destruction of Protected Health Information is infeasible, Business Associate shall extend indefinitely the protections of this Appendix to such Protected Health Information and shall limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

V. Violations.

- A. Any violation of this Appendix may cause irreparable harm to the DCS. Therefore, the DCS may seek any legal remedy, including an injunction or specific performance for such harm, without bond, security or necessity of demonstrating actual damages.
- B. Business Associate shall indemnify and hold the DCS harmless against all claims and costs resulting from acts/omissions of Business Associate in connection with Business Associate's obligations under this Appendix. Business Associate shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and save harmless the DCS from suits, actions, damages and costs, of every name and description relating to breach notification required by 45 CFR Part 164 Subpart D, or State Technology Law § 208, caused by any intentional act or negligence of Business Associate, its agents, employees, partners or subcontractors, without limitation. However, Business Associate shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the DCS.

VI. Miscellaneous.

- A. Regulatory References. A reference in this Appendix to a section in the Code of Federal Regulations means the section as in effect or as amended, and for which compliance is required.

- B. Amendment. Business Associate and the DCS agree to take such action as is necessary to amend this Appendix from time to time as is necessary for the DCS to comply with the requirements of HIPAA, HITECH and 45 CFR Parts 160 and 164.
- C. Survival. The respective rights and obligations of Business Associate under (IV)(C) of this Appendix shall survive the termination of the contract.
- D. Interpretation. Any ambiguity in this Appendix shall be resolved in favor of a meaning that permits the DCS to comply with HIPAA, HITECH and 45 CFR Parts 160 and 164.

HIV/AIDS. If HIV/AIDS information is to be disclosed under the contract, Business Associate acknowledges that it has been informed of the confidentiality requirements of Public Health Law Article 27-F.



Department of Civil Service

Employee Benefit Card Specifications - Agreement # C000730

Card Dimensions

Card size: 3.375 x 2.125  
Corner radius: .125

Card Stock Specifications: Core Color of the Card Stock = White, CR-80, PVC, 27 Mil thick

Colors Used

PMS 288 C and Black

CARD FRONT

Enrollee Number

Font: Proxima Nova Semibold  
Size: 14/13  
Placement:  
.1875" from left edge of card  
.7895" from top edge of card



**NYSHIP**  
New York State  
Health Insurance Program

**The Empire  
Plan**

123456789

JEANNIE EMPIRE PLAN ENROLLEE  
JOHN EMPIRE PLAN DEPENDENT  
JANE EMPIRE PLAN DEPENDENT  
MICHAEL EMPIRE PLAN DEPENDENT  
JAMES EMPIRE PLAN DEPENDENT

Administered by the New York State Department of Civil Service

NYSHIP-Empire Plan Lockup

Size: 2.5617" W x .4108" H  
Placement: .2055" from top  
.3925" from card left  
Color: PMS 288 C

Enrollee Names

Font: Proxima Nova Medium  
Size: 7/10  
Color: Black  
Placement:  
.1875" from left edge of card  
1.0995" from top edge of card

"Administered by" text

Font: Proxima Nova  
Condensed Regular  
Size: 5/6  
Color: PMS 288 C  
Placement:  
.8715" from left edge of card  
1.9375" from top edge of card

Call out box

Size: 1.0353" W x 1.229" H  
Placement: Bleeds top and left  
Color: PMS 288 C

"For enrollee services" text

Font: Proxima Nova Condensed Bold  
Size: 8/9 centered  
with .0625 space after  
Color: White  
Placement:  
.0825" from left edge of card  
.1953" from top edge of card

Phone Number

Font: Proxima Nova Condensed Bold  
Size: 9/10 centered  
with .0625 space before  
and .025 space after  
Color: White  
Placement:  
.1075" from card left edge  
.8242" from top edge of card

CARD BACK

For enrollee services,  
precertification &  
provider relations,  
please call:  
**1-877-7-NYSHIP**  
**(1-877-769-7447)**

**Providers:** This card represents but does not guarantee enrollment in the New York State Health Insurance Program (NYSHIP) for Government Employees.

**Submit hospital, skilled nursing facility and hospice claims to your local Blue Cross and/or Blue Shield Plan.** Hospital and related services provided by Empire HealthChoice Assurance, Inc., a licensee of the Blue Cross and Blue Shield Association, an association of independent Blue Cross and Blue Shield Plans.



Blue Cross Prefix: YLS

UnitedHealthcare Group# 030500



Submit medical provider claims in accordance with your participating provider agreement. Submit behavioral health provider claims to Beacon Health Options. All other non-hospital providers call 1-877-769-7447 for information about eligibility, benefits and claims submission.

UnitedHealthcare Logo

Size: .7586" W x .0849" H | Color: Black  
Placement: .1875" from card left edge; 1.375" from card top

"Providers" text

Font: Proxima Nova  
Condensed Regular  
Bold Font: Proxima Nova  
Condensed Bold  
Size: 6/7 with .03 space after  
Color: Black  
Placement:  
1.1005" from left edge of card  
.1945" from top edge of card

"Submit" text

Font: Proxima Nova  
Condensed Regular  
Size: 6/7 with .03 space after  
Color: Black  
Placement:  
2.5715" from left edge of card  
1.5832" from top edge of card

"Group #" text

Font: Proxima Nova  
Condensed Regular  
Size: 6/7 | Color: Black  
Placement: 1.0055" from card left edge  
1.4012" from card top

Multiplan Logo

Size: .3934" W x .1342" H  
Placement: 1.8325" from card left edge  
1.374 from card top  
Color: Black

Beacon Logo

Size: .4266" W x .1183" H  
Placement: 2.5715" from card left edge  
1.3622 from card top  
Color: Black

BlueCross Logo

Size: 0.1522" W x .1499" H  
Placement: 1.1464" from card left edge  
1.079" from card top  
Color: Black

PPO Logo

**PPO** Font: Proxima Nova Bold  
Size: 4/5  
**HOSPITAL ONLY** Font:  
Proxima Nova Bold  
Size: 3/4  
**Suitcase** Size: .1559" W x .1257" H  
Color: Black  
Placement: 1.4795" from card left edge  
1.0612" from card top

Blue Cross Plan 303

Font: Proxima Nova  
Condensed Bold  
Size: 4/4.5  
Color: Black  
Placement: 1.9665" from card left edge  
1.1152" from card top

Blue Cross Prefix: YLS

**Blue Cross Prefix** Font:  
Proxima Nova Bold  
Size: 5/5  
**YLS** Font: Proxima Nova  
Condensed Bold  
Size: 7/5  
Color: Black  
Placement: 2.45" from card left edge  
1.1484" from card top

# SEHP Identification Card With Carrier — Design Specifications

Card and Carrier designed in Adobe InDesign. All logo files are available in vector format.

**Card Dimensions:** Card size: 3.375" x 2.125" | Corner radius: .125"

**Carrier Dimensions:** 8.75" x 3.6325"

**Colors Used:** PMS 641 C and Black

## CARRIER FRONT

**Blue Color Band**  
Size: 4.0578" W x 1" H  
Placement: Left and top edge;  
Bleeds top and left  
Color: PMS 641 C

**NYSHIP-SEHP Lockup**  
Size: 2.9828" W x .4199" H  
Placement: .3205" from top of carrier/  
.537" from right edge of carrier  
Color: PMS 641 C

**Blue Color Band (90° Rotation)**  
Size: 3.625" W x .6875" H  
Placement: 4.1875" from left edge/  
Bleeds top and bottom  
Color: PMS 641 C

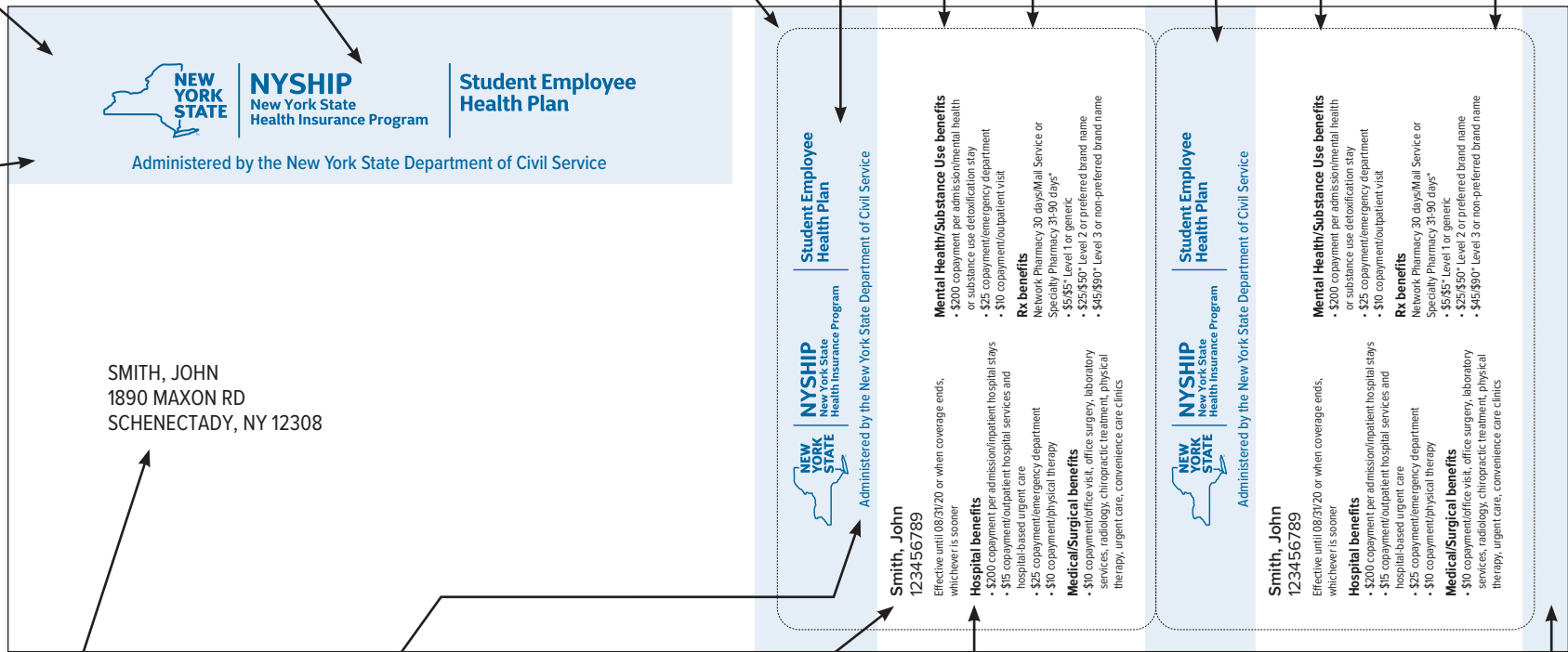
**NYSHIP-SEHP Lockup (90° Rotation)**  
Size: 2.2047" W x .3104" H  
Placement: .0905" from top of card/  
.5845" from left edge of card  
Color: PMS 641 C

**Card Placement (90° Rotation):**  
4.3125" from left/.125" from top of carrier

**Blue Color Band (90° Rotation)**  
Size: 3.625" W x .6185" H  
Placement: 6.3069" from left edge/  
Bleeds top and bottom  
Color: PMS 641 C

**Duplicate Card (90° Rotation)**  
**Card Placement:**  
6.433" from left/  
.125" from top of carrier

**"Administered by" text**  
Font: Proxima Nova  
Condensed  
Medium  
Size: 8/9  
Color: PMS 641 C  
Placement:  
.6998" from left edge/  
.8395" from top edge



**"Administered by" text (90° Rotation)**  
Font: Proxima Nova Condensed Medium  
Size: 6/7 | Color: PMS 641 C  
Placement: .4625" from top of card/  
.6915" from left edge of card

**Variable Enrollee Information**  
Font: Proxima Nova  
Condensed Regular  
Size: 9/10 | Color: Black  
Placement: .5625" from left edge of carrier/  
2" from top edge of carrier

**Variable Enrollee Name**  
Font: Proxima Nova Semibold | Size: 7/8  
Placement: .1875" from left edge of card/  
.6365" from top edge of card

**Variable Enrollee Number**  
Font: Proxima Nova Regular | Size: 7/8 with .04" space after

**"Effective until..." text**  
Font: Proxima Nova Regular | Size: 5/6  
Placement: .1875" from card left/.875" from card top

**Benefits Bold**  
Font: Proxima Nova Condensed Bold  
Size: 6/7 with .03" space before  
Color: Black

**Copayment Bullet Text**  
Font: Proxima Nova Condensed Regular  
Size: 5/6 | Bullet Indent: .0417"  
Color: Black  
Placement: .1875" from left edge of card

**Blue Color Band (90° Rotation)**  
Size: 3.625" W x .2565" H  
Placement: 8.4935" from  
carrier left edge/  
Bleeds top and bottom  
Color: PMS 641 C

## CARRIER BACK

**Body Text (both columns)**  
 Font: Proxima Nova Condensed Regular  
 Size: 5/6 with .03" space after  
 Color: Black  
 Placement: .1875" from left edge of card/  
 .5625" from top edge of card

**Bold Text**  
 Font: Proxima Nova Condensed Bold  
 Size: 5/6 with .03" space after  
 Color: Black

**Blue Rule (Round End)**  
 Length: 1.5625" | Size: 2pt  
 Placement: 1.6736" from left edge of card/  
 .1875" from top edge of card  
 Color: PMS 641 C

**Card Placement (90° Rotation):**  
 2.3125" from left/  
 .125" from top of carrier

**Phone Icon**  
 Size: .1875" W x .1875" H  
 Placement:  
 .1875" from left edge of card/  
 .1875" from top edge of card  
 Color: PMS 641 C

**You Must Call**  
 Font: Proxima Nova Extrabold  
 Size: 7/7 | Color: Black  
 Placement:  
 .4025" from left edge of card/  
 .2545" from top edge of card

**Toll Free Number**  
 Font: Proxima Nova Condensed Bold  
 Size: 6/6 | Color: Black  
 Placement:  
 1.0656" from left edge of card/  
 .1725" from top edge of card

**"This card..." text**  
 Font: Proxima Nova Condensed Regular  
 Size: 5/6 with .03" space after  
 Color: Black  
 Placement:  
 .1875" from card left/  
 1.806" from card top

**HERE IS YOUR NEW YORK STATE HEALTH INSURANCE PROGRAM (NYSHIP) STUDENT EMPLOYEE HEALTH PLAN (SEHP) BENEFIT CARDS EFFECTIVE UNTIL 08/31/20**

Please detach your card and carry it with you at all times.

You will need this NYSHIP Student Employee Health Plan (SEHP) benefit card for hospital, medical, surgical, mental health/substance use and prescription drug benefits. You will receive separate cards for dental and vision benefits.

Please review your NYSHIP benefit card. If you see any errors in this card or if you have a change of address or need to add or delete a dependent, notify your Health Benefits Administrator (HBA).

Visit [www.cs.ny.gov/employee-benefits](http://www.cs.ny.gov/employee-benefits) for SEHP benefits information and the online Participating Provider Directory search. See your HBA if you need print copies.

Copayment and precertification requirements indicating when "you must call" have been printed on your card. Your HBA will notify you of your current premium. Notice of any premium rate change will be mailed to your home.

**YOUR ACTUAL COVERAGE START AND END DATES MAY VARY FROM THE DATE SHOWN ABOVE AND ON YOUR CARD.** If you leave your position before the end of the academic year, or if you are not entitled to summer coverage, your coverage will end before the date on your card. Your HBA will tell you the exact dates of your coverage.

If you elect COBRA continuation, you will receive a letter from the New York State Department of Civil Service telling you the dates of your COBRA coverage.

**When coverage ends**  
 Your coverage in NYSHIP SEHP will end 28 days after the last day of the last payroll period worked, even if your identification card has a different termination date.

Do not use your card after coverage ends. It is insurance fraud for an enrollee or dependent to use the card to obtain services after eligibility for coverage ends.

New York State Department of Civil Service <https://www.cs.ny.gov>

**You must call**  
 Toll Free  
 1-877-769-7447

**Pre-certification required for:**  
 Admission to a hospital. Select the Hospital Program. For an emergency admission, call within 48 hours. Outpatient MRI, MRA, CT, PET and nuclear medicine tests. Select the Medical/Surgical Program.  
 Mental Health and/or Substance Use Services: Please refer to your A.A. Gance publication for the listing of services that require pre-certification. For emergency admissions, call within 48 hours. Select the Mental Health and Substance Abuse Program.  
 Home Care and Diabetic Supplies/Equipment: Select the Medical/Surgical Program.

**You must call**  
 Toll Free  
 1-877-769-7447

**Pre-certification required for:**  
 Admission to a hospital. Select the Hospital Program. For an emergency admission, call within 48 hours. Outpatient MRI, MRA, CT, PET and nuclear medicine tests. Select the Medical/Surgical Program.  
 Mental Health and/or Substance Use Services: Please refer to your A.A. Gance publication for the listing of services that require pre-certification. For emergency admissions, call within 48 hours. Select the Mental Health and Substance Abuse Program.  
 Home Care and Diabetic Supplies/Equipment: Select the Medical/Surgical Program.

This card represents but does not guarantee enrollment in the New York State Health Insurance Program. It is insurance fraud for an enrollee or dependent to use the card to obtain services after eligibility for coverage ends.

**Duplicate Card (90° Rotation)**  
**Card Placement:**  
 .1875" from carrier left/  
 .125" from carrier top

**Submit hospital and hospice claims to your local BlueCross and/or BlueShield Plan.** Hospital and related claims services provided by Empire HealthChoice Assurance, Inc., a licensee of the BlueCross and BlueShield Association, an association of independent BlueCross and BlueShield Plans.


**Submit medical provider claims in accordance with your participating provider agreement.** Submit behavioral health provider claims to Beacon Health Options. All other non-hospital providers call 1-877-769-7447 for information about eligibility, benefits and claims submission.


 **UnitedHealthcare** Group# 030500

 **Blue Cross** Prefix: YLS

**Submit hospital and hospice claims to your local BlueCross and/or BlueShield Plan.** Hospital and related claims services provided by Empire HealthChoice Assurance, Inc., a licensee of the BlueCross and BlueShield Association, an association of independent BlueCross and BlueShield Plans.

**Submit medical provider claims in accordance with your participating provider agreement.** Submit behavioral health provider claims to Beacon Health Options. All other non-hospital providers call 1-877-769-7447 for information about eligibility, benefits and claims submission.

 **UnitedHealthcare** Group# 030500

 **Blue Cross** Prefix: YLS

**Beacon Logo:**  
 Size: .4266" W x .1183" H | Color: Black  
 Placement: 2.2435" from left/ 1.6295" from card top

**UnitedHealthcare Logo**  
 Size: .5989" W x .067" H  
 Color: Black  
 Placement:  
 1.8125" from card left  
 1.4982" from card top

**Group# Text**  
 Font: Proxima Nova Condensed Regular  
 Size: 6/7 | Color: Black  
 Placement:  
 2.5" from card left edge  
 1.5075" from card top

**Body Text**  
 Placement:  
 1.8125" from card left/  
 .1875" from card top

**Name and Website**  
 Font: Proxima Nova Condensed Regular  
 Size: 6/7 with .03" space after | Color: Black  
 Placement: 4.625" from carrier left/  
 3.3125" from carrier top

**"HERE IS YOUR..." text**  
 Color: Black  
**Headline**  
 Font: Proxima Nova Condensed Bold  
 Size: 8/9 with .0625" space after  
 Placement: 4.625" from carrier left/  
 .2465" from carrier top

**BlueCross Logo**  
 Size: .1522" W x .1499" H  
 Placement: 1.8125" from card left/  
 1.2747" from card top  
 Color: Black

**PPO Logo**  
**PPO** Font: Proxima Nova Bold | Size: 4/5  
**HOSPITAL ONLY** Font: Proxima Nova Bold  
 Size: 3/4  
**Suitcase** Size: .1559" W x .1257" H | Color: Black  
 Placement: 2.1455" from card left/  
 1.2639" from card top

**Blue Cross Plan 303**  
 Font: Proxima Nova Condensed Bold  
 Size: 4/4.5 | Color: Black  
 Placement: 2.4785" from card left/  
 1.2845" from card top

**Blue Cross Prefix: YLS**  
**Blue Cross Prefix** Font: Proxima Nova Bold  
 Size: 5/6  
**YLS** Font: Proxima Nova Condensed Bold  
 Size: 7/6 | Color: Black  
 Placement: 2.8465" from card left/  
 1.2845" from card top

**Paragraph Text**  
 Font: Proxima Nova Condensed Regular  
 Size: 7/8 with .03" space after

**"When coverage ends..." subhead**  
 Font: Proxima Nova Condensed Bold  
 Size: 7/8 with .0625" space before

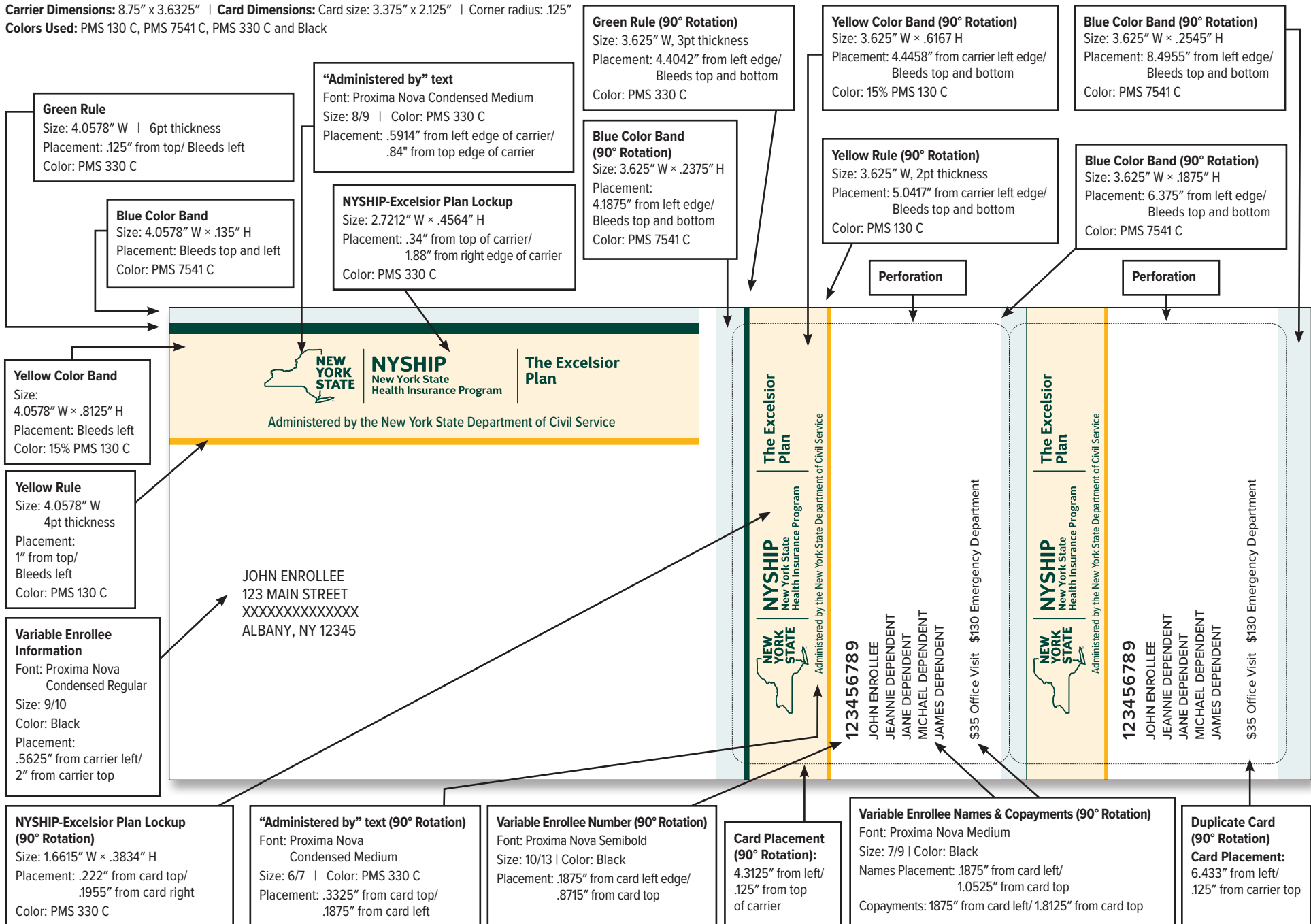
# Excelsior Plan Identification Card With Carrier — Design Specifications

## CARRIER FRONT

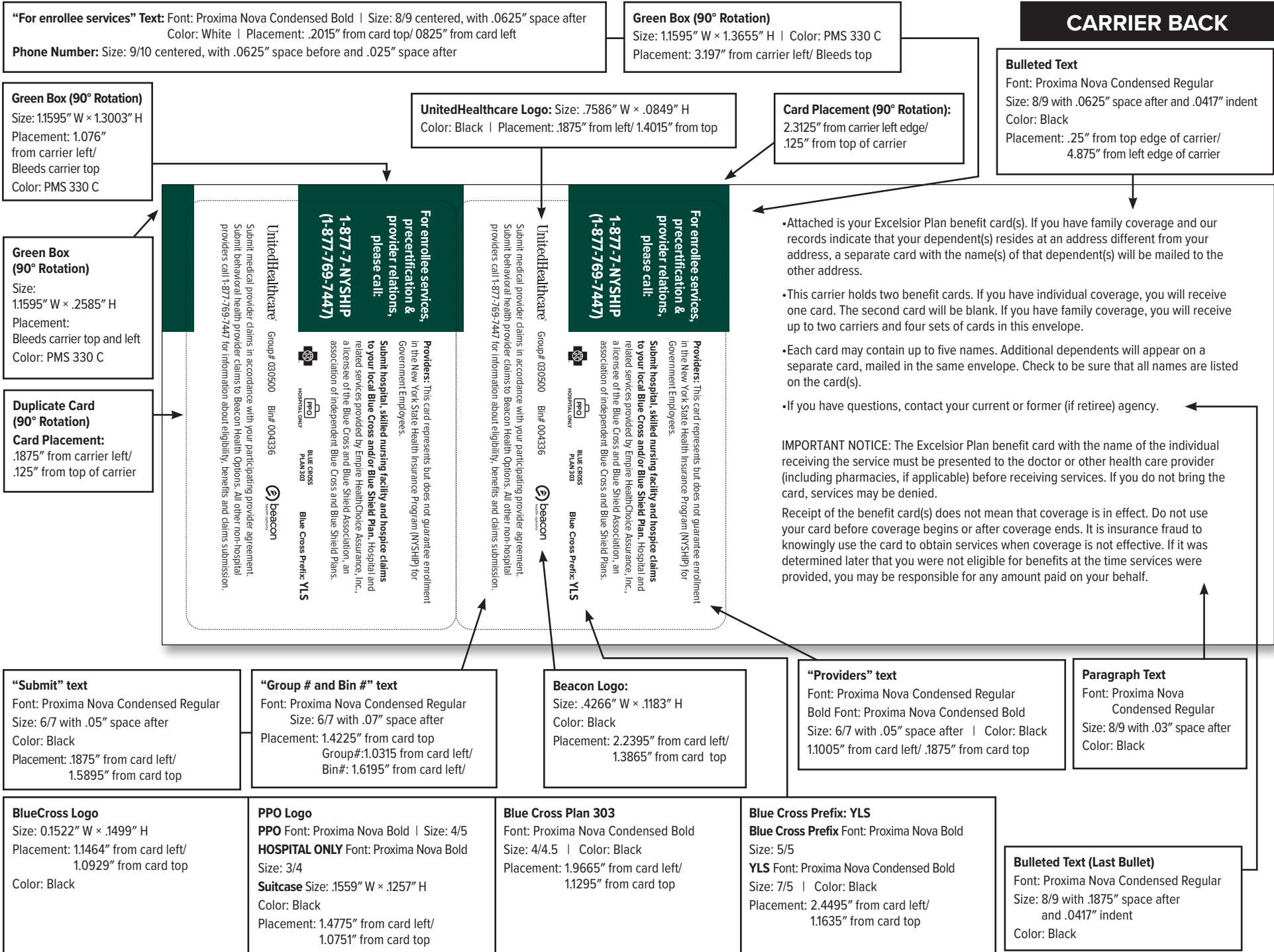
Card and Carrier designed in Adobe InDesign. All logo files are available in vector format.

**Carrier Dimensions:** 8.75" x 3.6325" | **Card Dimensions:** Card size: 3.375" x 2.125" | Corner radius: .125"

**Colors Used:** PMS 130 C, PMS 7541 C, PMS 330 C and Black









Sample Empire Plan Employee Benefit Card and Card Carrier - Agreement # C000730

IMPORTANT EMPIRE PLAN INFORMATION ENCLOSED



The Empire Plan

EMPLOYING AGENCY NAME  
AGENCY ADDRESS LINE 1  
CITY STATE ZIPCODE

RETURN SERVICE REQUESTED

ENROLLEE LAST NAME, FIRST NAME  
ENROLLEE ADDRESS LINE 1  
ENROLLEE ADDRESS LINE 2  
CITY STATE ZIPCODE



NYSHIP  
New York State  
Health Insurance Program

For New York  
Government Employees  
New York State Health Insurance Program  
State of New York  
Department of Civil Service  
Empire State Plaza, Core Bldg 1, 2nd Fl  
Albany, NY 12339  
www.cs.ny.gov

(Single-Window Envelope)

(Tri-Fold)

ID NUMBER: 123456789

NUMBER OF CARDS: 4



NYSHIP  
New York State  
Health Insurance Program

The Empire  
Plan

123456789

JEANNIE EMPIRE PLAN ENROLLEE  
JOHN EMPIRE PLAN DEPENDENT  
JANE EMPIRE PLAN DEPENDENT  
MICHAEL EMPIRE PLAN DEPENDENT  
JAMES EMPIRE PLAN DEPENDENT

Administered by the New York State Department of Civil Service



NYSHIP  
New York State  
Health Insurance Program

The Empire  
Plan

123456789

JEANNIE EMPIRE PLAN ENROLLEE  
JOHN EMPIRE PLAN DEPENDENT  
JANE EMPIRE PLAN DEPENDENT  
MICHAEL EMPIRE PLAN DEPENDENT  
JAMES EMPIRE PLAN DEPENDENT

Administered by the New York State Department of Civil Service



NYSHIP  
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JAMES EMPIRE PLAN DEPENDENT

Administered by the New York State Department of Civil Service



NYSHIP  
New York State  
Health Insurance Program

The Empire  
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JEANNIE EMPIRE PLAN ENROLLEE  
JOHN EMPIRE PLAN DEPENDENT  
JANE EMPIRE PLAN DEPENDENT  
MICHAEL EMPIRE PLAN DEPENDENT  
JAMES EMPIRE PLAN DEPENDENT

Administered by the New York State Department of Civil Service

(Tri-Fold)

# ATTACHMENT 2



Department of  
Civil Service

## Sample Empire Plan Employee Benefit Card and Card Carrier - Agreement # C000730

<p><b>PLEASE READ THE FOLLOWING CAREFULLY</b></p>	<ul style="list-style-type: none"><li>• Attached is your Empire Plan Benefit Card(s). If you have Family Coverage and our enrollment records indicate that your dependent(s) resides at an address different from your address, a separate card with the name(s) of that dependent(s) will be mailed to the other address.</li><li>• This carrier holds up to four Empire Plan Benefit Card(s). If you have Individual coverage, you will receive one card. If you have Family coverage, you will receive up to two sets of cards in this envelope.</li><li>• Each card may contain up to six names. You may receive additional cards in a separate envelope if the names of all your dependents residing at the same address on the front of this card carrier do not appear on the enclosed cards.</li><li>• If you have questions about your copayments, refer to your Empire Plan materials.</li></ul>
<p><b>STEPS THE CARDHOLDER SHOULD FOLLOW AND CONTACT INFORMATION FOR CARD CORRECTIONS AND QUESTIONS:</b></p>	<ul style="list-style-type: none"><li>• Check to be sure that all names are listed on the card(s).</li><li>• If you are an employee, contact your personnel office. If you are a retiree of a local government, contact your former employer's personnel office. If you are a retiree of New York State or a retiree of a participating employer such as the Thruway Authority or the Metropolitan Transportation Authority, contact The Empire Plan at 1-877-7NYSHIP (1-877-769-7447).</li></ul>
<p><b>IMPORTANT NOTICE</b></p>	<p>The Empire Plan Benefit Card with the name of the individual Receiving the service must be presented to the doctor or other health care provider (including pharmacies, if applicable) before receiving services. If you do not bring the card, services may be denied.</p> <p>Receipt of the Empire Plan Benefit Card(s) does not mean that coverage is in effect. Do not use your card before coverage begins or after coverage ends. It is insurance fraud to knowingly use the card to obtain services when coverage is not in effect. If it is determined that you were not eligible for benefits at the time services were provided, you may be responsible for any amount paid on your behalf.</p>

ATTACHMENT 2



Department of Civil Service

Sample Empire Plan Employee Benefit Card and Card Carrier - Agreement # C000730

EMPLOYING AGENCY NAME  
AGENCY ADDRESS LINE 1  
AGENCY ADDRESS LINE 2  
CITY STATE ZIPCODE



The Empire Plan

(Double-Window Envelope)

ENROLLEE LAST NAME, FIRST NAME  
ENROLLEE ADDRESS LINE 1  
ENROLLEE ADDRESS LINE 2  
CITY STATE ZIPCODE

**For New York State Government Employees**  
New York State Health Insurance Program  
State of New York  
Department of Civil Service  
Empire State Plaza, Core Bldg 1, 2nd Fl  
Albany, NY 12239  
www.cs.ny.gov

(Tri-Fold)

ID NUMBER: 123456789

NUMBER OF CARDS: 4



**NYSHIP**  
New York State Health Insurance Program

The Empire Plan

123456789

JEANNIE EMPIRE PLAN ENROLLEE  
JOHN EMPIRE PLAN DEPENDENT  
JANE EMPIRE PLAN DEPENDENT  
MICHAEL EMPIRE PLAN DEPENDENT  
JAMES EMPIRE PLAN DEPENDENT

Administered by the New York State Department of Civil Service



**NYSHIP**  
New York State Health Insurance Program

The Empire Plan

123456789

JEANNIE EMPIRE PLAN ENROLLEE  
JOHN EMPIRE PLAN DEPENDENT  
JANE EMPIRE PLAN DEPENDENT  
MICHAEL EMPIRE PLAN DEPENDENT  
JAMES EMPIRE PLAN DEPENDENT

Administered by the New York State Department of Civil Service



**NYSHIP**  
New York State Health Insurance Program

The Empire Plan

123456789

JEANNIE EMPIRE PLAN ENROLLEE  
JOHN EMPIRE PLAN DEPENDENT  
JANE EMPIRE PLAN DEPENDENT  
MICHAEL EMPIRE PLAN DEPENDENT  
JAMES EMPIRE PLAN DEPENDENT

Administered by the New York State Department of Civil Service



**NYSHIP**  
New York State Health Insurance Program

The Empire Plan

123456789

JEANNIE EMPIRE PLAN ENROLLEE  
JOHN EMPIRE PLAN DEPENDENT  
JANE EMPIRE PLAN DEPENDENT  
MICHAEL EMPIRE PLAN DEPENDENT  
JAMES EMPIRE PLAN DEPENDENT

Administered by the New York State Department of Civil Service

(Tri-Fold)

## ATTACHMENT 2



Department of  
Civil Service

### Sample Empire Plan Employee Benefit Card and Card Carrier - Agreement # C000730

#### PLEASE READ THE FOLLOWING CAREFULLY

- Attached is your Empire Plan Benefit Card(s). If you have Family Coverage and our enrollment records indicate that your dependent(s) resides at an address different from your address, a separate card with the name(s) of that dependent(s) will be mailed to the other address.
- This carrier holds up to four Empire Plan Benefit Card(s). If you have Individual coverage, you will receive one card. If you have Family coverage, you will receive up to two sets of cards in this envelope.
- Each card may contain up to six names. You may receive additional cards in a separate envelope if the names of all your dependents residing at the same address on the front of this card carrier do not appear on the enclosed cards.
- If you have questions about your copayments, refer to your Empire Plan materials.

#### STEPS THE CARDHOLDER SHOULD FOLLOW AND CONTACT INFORMATION FOR CARD CORRECTIONS AND QUESTIONS:

- Check to be sure that all names are listed on the card(s).
- If you are an employee, contact your personnel office. If you are a retiree of a local government, contact your former employer's personnel office. If you are a retiree of New York State or a retiree of a participating employer such as the Thruway Authority or the Metropolitan Transportation Authority, contact The Empire Plan at 1-877-7NYSHIP (1-877-769-7447).

#### IMPORTANT NOTICE

The Empire Plan Benefit Card with the name of the individual receiving the service must be presented to the doctor or other health care provider (including pharmacies, if applicable) before receiving services. If you do not bring the card, services may be denied.

Receipt of the Empire Plan Benefit Card(s) does not mean that coverage is in effect. Do not use your card before coverage begins or after coverage ends. It is insurance fraud to knowingly use the card to obtain services when coverage is not in effect. If it is determined that you were not eligible for benefits at the time services were provided, you may be responsible for any amount paid on your behalf.



**Sample Empire Plan Employee Benefit Card and Card Carrier - Agreement # C000730**

**1. Card Carrier Specifications:**

- Paper Size = 8.5” x 11”; Weight 70# **or** 80#
- Color of the Card Carrier = White
- Variable and Non-Variable Ink Color = Black at 100%

**2. Card Carrier Prototype and Information:**

Option A	Option B
<i>Single-Window Envelope</i>	<i>Double-Window Envelope</i>
<p><b>Front of Card Carrier</b></p> <p>Variable information printed in black at 100%:</p> <ul style="list-style-type: none"> <li>▪ Information that <b>MUST</b> appear in the Envelope window when Card Carrier is tri-folded:                             <ul style="list-style-type: none"> <li>-Name and address of the employing agency in font Proxima Nova 10.0</li> <li>-Name and address of the Enrollee in font Proxima Nova 10.0</li> </ul> </li> <li>▪ Information that <b>MUST NOT</b> appear in the Envelope window when the Card Carrier is tri-folded:                             <ul style="list-style-type: none"> <li>-Enrollee’s Empire Plan identification number</li> <li>-Number of cards issued</li> </ul> </li> </ul> <p>Non-variable information printed in black at 100%</p> <ul style="list-style-type: none"> <li>▪ Information that <b>MUST</b> appear in the Envelope window when Card Carrier is tri-folded:                             <ul style="list-style-type: none"> <li>-Empire Plan Logo printed to the left of employing agency</li> </ul> </li> </ul>	<p><b>Front of Card Carrier</b></p> <p>Variable information printed in Black at 100%</p> <ul style="list-style-type: none"> <li>▪ Information that <b>MUST</b> appear in the Envelope window when the Card Carrier is tri-folded:                             <ul style="list-style-type: none"> <li>-Name and address of the employing agency in the top left window in font Proxima Nova 10.0</li> <li>-Name and address of the Enrollee in the lower center window in font Proxima Nova 10.0</li> </ul> </li> <li>▪ Information that <b>MUST NOT</b> appear in the Envelope window when the Card Carrier is tri-folded:                             <ul style="list-style-type: none"> <li>-Enrollee’s Empire Plan identification number</li> <li>-Number of cards issued</li> </ul> </li> <li>▪ Additional information on the Card Carrier that <b>MUST NOT</b> appear in the Envelope window(s):                             <ul style="list-style-type: none"> <li>-NYSHIP Logo top right side</li> </ul> </li> </ul>

## ATTACHMENT 2



**Department of  
Civil Service**

### Sample Empire Plan Employee Benefit Card and Card Carrier - Agreement # C000730

<p>-“Important Empire Plan Information Enclosed” printed at top of window in font Proxima Nova 10.0</p> <p>-“Return Service Requested” printed in between employing agency and Enrollee address in font Proxima Nova 10.0</p>	<p>-“For New York Government Employees” centered directly below the NYSHIP Logo in Proxima Nova 11.0</p> <p>-“New York State Health Insurance Program” directly below “For New York Government Employees”, text aligned to the left, in Proxima Nova 12.0</p>
<b>Option A</b>	
<b><i>Single-Window Envelope</i></b>	
<ul style="list-style-type: none"> <li>▪ Additional information on the Card Carrier that <b>MUST NOT</b> appear in the Envelope window(s):</li> <li>-NYSHIP Logo top right side</li> <li>-“For New York Government Employees” centered directly below the NYSHIP Logo in D Sari Bold 11.0</li> <li>- “New York State Health Insurance Program...” directly below “For New York Government Employees ”, text aligned to the left, in Proxima Nova 12.0</li> <li>- “PLEASE READ THE INFORMATION ON THE REVERSE SIDE CAREFULLY” centered on the bottom of the Card Carrier in Proxima Nova 12.0</li> <li>- “RECEIPT OF THIS EMPIRE PLAN BENEFIT CARD(S) DOES NOT MEAN COVERAGE IS IN EFFECT.</li> <li>IF YOU HAVE QUESTIONS ABOUT YOUR EFFECTIVE DATE, REFER TO THE REVERSE SIDE</li> </ul>	<p style="text-align: center;"><b>Option B</b></p> <p style="text-align: center;"><b><i>Double-Window Envelope</i></b></p> <p>-“PLEASE READ THE INFORMATION ON THE REVERSE SIDE CAREFULLY” centered on the bottom of the Card Carrier in Proxima Nova 12.0</p> <p>-“RECEIPT OF THIS EMPIRE PLAN BENEFIT CARD(S) DOES NOT MEAN COVERAGE IS IN EFFECT.</p> <p>IF YOU HAVE QUESTIONS ABOUT YOUR EFFECTIVE DATE, REFER TO THE REVERSE SIDE</p> <p>FOR CONTACT INFORMATION.” centered directly under “PLEASE READ THE INFORMATION ON THE REVERSE SIDE CAREFULLY” in Proxima Nova 11.0</p> <p><b>Back of Card Carrier</b></p> <p>Non-variable information printed in Black at 100%</p> <ul style="list-style-type: none"> <li>▪ All information on the back of the Card Carrier is non-variable</li> </ul>



**Sample Empire Plan Employee Benefit Card and Card Carrier - Agreement # C000730**

<p>FOR CONTACT INFORMATION.” centered directly under “PLEASE READ THE INFORMATION ON THE REVERSE SIDE CAREFULLY” in Proxima Nova 11.0</p> <p><b>Back of Card Carrier</b></p> <p>Non-variable information printed in Black at 100%</p> <ul style="list-style-type: none"> <li>All information on the back of the Card Carrier is non-variable</li> </ul> <p>-“PLEASE READ THE FOLLOWING CAREFULLY”; and IMPORTANT NOTICE have a black background with white text in all caps in font Proxima Nova, Bold 13.0</p> <p>-“STEPS THE CARDHOLDER SHOULD FOLLOW AND CONTACT INFORMATION FOR CARD CORRECTIONS AND QUESTIONS” has a black background with white text in all caps in font Proxima Nova, Bold 11.0</p> <p>-All information in black text is Proxima Nova 12.0 with the last paragraph in bold</p>	<p>-“PLEASE READ THE FOLLOWING INFORMATION CAREFULLY”; and IMPORTANT NOTICE have a black background with white text in all caps in font Proxima Nova, Bold 13.0</p> <p>-“STEPS THE CARDHOLDER SHOULD FOLLOW AND CONTACT INFORMATION FOR CARD CORRECTIONS AND QUESTIONS” has a black background with white text in all caps in font Proxima Nova, Bold 11.0</p> <p>-All information in black text is Proxima Nova 12.0 with the last paragraph in bold</p>
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ATTACHMENT 3



**Department of  
Civil Service**

**Contractor's Fees for Project  
Services – Agreement # C000730**

<b>Empire Plan</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
Per EBC fee	████	████	████	████	████
Card Carrier and Envelope (per Packet)	████	████	████	████	████

<b>Excelsior Plan &amp; SEHP</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
Per EBC fee	████	████	████	████	████
Card Carrier and Envelope (per Packet)	████	████	████	████	████

Each Card Carrier and Envelope Packet includes one (1) Card Carrier and one (1) Envelope.

Fees include all costs to produce the EBC, Card Carrier and Envelope, including materials, administration, startup costs, and management reporting costs.

**Fees do not include USPS charges as these will be reimbursed on a pass-through basis.**

ATTACHMENT 4



Department of  
Civil Service

Sample Card Detail Report –  
Agreement # C000730

PLAN NAME: \_\_\_\_\_

EMPLOYEE BENEFIT CARD DETAIL REPORT  
BY AGENCY CODE  
FOR THE WEEK OF \_\_\_\_\_

RUN DATE: MM/DD/YYYY

RUN TIME: HH:MM:SS

RUN NUMBER : <Sequential Numbering to Identify Cycle – Starting with 1 >

EBC MAILING DATE: MM/DD/YYYY

DEPARTMENT OF CIVIL SERVICE  
EMPLOYEE BENEFITS DIVISION  
VENDOR MANAGEMENT UNIT  
ALBANY, NY 12239

AGENCY CODE: XXXXX

---

CARDHOLDER ID	ENROLLEE/DEPENDENT NAME ADDRESS	NUMBER OF CARDS PRODUCED
123456789	LAST NAME, FIRST NAME LAST NAME, DEPENDENT FIRST NAME ADDRESS LINE 1 CITY STATE ZIP CODE	2
987654321	LAST NAME, FIRST NAME ADDRESS LINE 1 CITY STATE ZIP CODE	1

---

ATTACHMENT 5



**Sample Card Summary Report –  
Agreement # C000730**

EMPLOYEE BENEFIT CARD SUMMARY REPORT  
FOR THE WEEK OF \_\_\_\_\_

Run Date: MM/DD/YYYY

Run Time: HH:MM:SS

Run Number: <Sequential Numbering to Identify Cycle – Starting with 1>

EBC Mailing Date: MM/DD/YYYY

	Empire Plan	SEHP		Excelsior
		SUNY	CUNY	
Total number of records	4,897	55	5	2
Total number of Individual cards produced	897			
Total number of Family cards produced	2,563			
Total number of cards produced	3,460			
Number of Envelopes Mailed	2,166			
Number of One Card Per Carrier	897			
Number of Two Cards Per Carrier	1,257			
Number of Four Cards Per Carrier	12			
Annual Reissuance	N/A	3,800	1,000	N/A

**PLEASE NOTE THE NUMBERS ABOVE ARE FOR ILLUSTRATIVE PURPOSES ONLY. CARRIER-SPECIFIC DATA IS NOT AVAILABLE FOR SEHP OR EXCELSIOR**

ATTACHMENT 6



**Sample Data Load Count Report –  
Agreement # C000730**

**\*\* Start of Report \*\***

PLAN NAME<sup>(1)</sup>: \_\_\_\_\_

EMPLOYEE BENEFIT CARD DATA LOAD COUNT REPORT  
FOR THE WEEK OF \_\_\_\_\_

Run Date: MM/DD/YYYY

Run Time: HH:MM:SS

Run Number: <Sequential Numbering to Identify Cycle – Starting with 1>

---

Received

Total Packets: 1414

Total Members: 3245

Rejected

Total Packets: 0

Total Members: 0

Valid

Total Packets: 1414

Total Members: 3245

**\*\* End of Report \*\***

<sup>(1)</sup> SEHP report must distinguish data between SUNY and CUNY

**PLEASE NOTE THE NUMBERS ABOVE ARE FOR ILLUSTRATIVE PURPOSES  
ONLY**

ATTACHMENT 7



Department of  
Civil Service

Sample Address Change Report –  
Agreement # C000730

PLAN NAME: \_\_\_\_\_

RUN DATE: MM/DD/YYYY

DATE: MM/DD/YYYY

RUN TIME: HH:MM:SS

TIME: HH:MM:SS

RUN NUMBER: <Sequential Numbering to Identify Cycle – Starting with 1

PAGE: \_\_\_\_\_

ID	Name	Original Address	Revised Address
890123456	LAST NAME, FIRST NAME	ADDRESS LINE 1 ADDRESS LINE 2 CITY STATE ZIP CODE	ADDRESS LINE 1 APT 123 CITY STATE ZIP CODE
890123456	LAST NAME, FIRST NAME	ADDRESS LINE 1 ADDRESS LINE 2 CITY STATE ZIP CODE	ADDRESS LINE 1 APT 123 CITY STATE ZIP CODE
890123456	LAST NAME, FIRST NAME	ADDRESS LINE 1 ADDRESS LINE 2 CITY STATE ZIP CODE	ADDRESS LINE 1 APT 123 CITY STATE ZIP CODE
890123456	LAST NAME, FIRST NAME	ADDRESS LINE 1 ADDRESS LINE 2 CITY STATE ZIP CODE	ADDRESS LINE 1 APT 123 CITY STATE ZIP CODE
890123456	LAST NAME, FIRST NAME	ADDRESS LINE 1 ADDRESS LINE 2 CITY STATE ZIP CODE	ADDRESS LINE 1 APT 123 CITY STATE ZIP CODE
890123456	LAST NAME, FIRST NAME	ADDRESS LINE 1 ADDRESS LINE 2 CITY STATE ZIP CODE	ADDRESS LINE 1 APT 123 CITY STATE ZIP CODE
890123456	LAST NAME, FIRST NAME	ADDRESS LINE 1 ADDRESS LINE 2 CITY STATE ZIP CODE	ADDRESS LINE 1 APT 123 CITY STATE ZIP CODE
890123456	LAST NAME, FIRST NAME	ADDRESS LINE 1 ADDRESS LINE 2 CITY STATE ZIP CODE	ADDRESS LINE 1 APT 123 CITY STATE ZIP CODE

ATTACHMENT 8



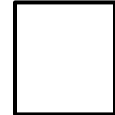
**Sample Employee Benefit Card Envelope –  
Agreement # C000730**

**IMPORTANT EMPIRE PLAN INFORMATION ENCLOSED**

EMPLOYING AGENCY NAME  
AGENCY ADDRESS LINE 1  
CITY STATE ZIPCODE

**RETURN SERVICE REQUESTED**

ENROLLEE LAST NAME, FIRST NAME  
ENROLLEE ADDRESS LINE 1  
ENROLLEE ADDRESS LINE 2  
CITY STATE ZIPCODE



Sample - #10 Business Envelope Single-Window, Stock  
Weight 24#, Envelope Color = White

**Envelope Prototype and Information**

**Option A**

***Single-Window Envelope***

Non-variable information printed ***on the front of the Envelope*** in Black at 100%

- Indicia in font Proxima Nova 10.0

ATTACHMENT 8

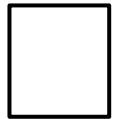


Department of  
Civil Service

Sample Employee Benefit Card Envelope –  
Agreement # C000730

**IMPORTANT PLAN INFORMATION ENCLOSED**

EMPLOYING AGENCY NAME  
AGENCY ADDRESS LINE 1  
AGRENCY ADDRESS LINE 2  
CITY STATE ZIPCODE



**RETURN SERVICE REQUESTED**

ENROLLEE LAST NAME, FIRST NAME  
ENROLLEE ADDRESS LINE 1  
ENROLLEE ADDRESS LINE 2  
CITY STATE ZIPCODE

Sample - #10 Business Envelope Double-Window, Stock  
Weight 24#, Envelope Color = White

**Envelope Prototype and Information Option B**

***Double-Window Envelope***

Non-variable information printed ***on the front of the Envelope*** in Black at 100%

- “Important Plan Information Enclosed” printed above the top window in font Proxima Nova-Bold 14.0
- “Return Service Requested” between the windows in font Proxima Nova-Bold 10.0
- Indicia in font Proxima Nova 10.0

ATTACHMENT 9



Department of  
Civil Service

**Sample Quarterly Performance Report –  
Agreement # C000730**

New York State Employee Benefit Card - Contractor  
EBC Mailing and Report Distribution

Plan Name: \_\_\_\_\_

Run #	Process Date	EBC Mail Date	# of Cards	Production Reports Date	Guarantee Met (Y/N)	# Days Late/Credit Amount





Sample Empire Plan Card File Layout – Agreement # C000730

	Field-Name	Attributes	Field Length	From	To	From	TO	PS Record	PS Field Name	PS Attribute	Value	Mapping Notes
BEN_PLAN_CARD	RECORD_NUMBER	9(7)	7	1	7	1	7				Record Number	Record number should start with 000001 and be incremented by 1 for each record.
	ALTERNATE_IDENTIFIER	9(9)	9	8	16	8	16	Person	Bea_Altid	char 9	The format of the alternate identifier is a nine digit numeric field that begins with '89'.	Since an alternate identifier is issued only for employees, the employee alternate identifier will be on all cards.
	CNTR_HLDR_NAME	pic x(50)	50	17	66	17	66	Names	Name	char 50	Last Name, First Name, and Middle Initial of member, (Enrollee or Dependent).	Format Name to Last Name (comma) (space) First Name (space) Middle Initial
	COVERAGE_CODE	pic x(1)	1	67	68	67	67	Health_Benefit	Covrg_Cd		Valid values: I = Individual F = Family Coverage_Code will be present on both employee and dependent data rows.	Set Covrg_Cd 1 = I Set Covrg_Cd 4 = F Set Covrg_Cd A = I Set Covrg_Cd B = F Set Covrg_Cd C = F Set Covrg_Cd D = F
RETURN_ADR_NAME	AGENCY_NAME	pic x(30)	30	69	99	68	97	Dept_Tbl	Descr	char 30	Agency Name	If Benefit_Program begins with 'A', 'M' or 'P', use Dept_Tbl.Description for enrollee Job.Deptid, else use 'EMPLOYEE INSURANCE SECTION'
RETURN_ADDRESS	AGENCY_ADDR1	pic x(35)	35	100	135	98	132	Bea_Dept_Contct	Address1	char 35	Address1 of Agency	If Benefit_Program begins with 'A', 'M' or 'P', relate Deptid to Location., use Address1. Else set to 'DEPARTMENT OF CIVIL SERVICE'.
	AGENCY_ADDR2	pic x(35)	35	136	171	133	167	Bea_Dept_Contct	Address2	char 35	Address2 of Agency	If Benefit_Program begins with 'A', 'M' or 'P', relate Deptid to Location., use Address2. Else set to 'EBD - MONTHLY OPERATIONS UNIT NYS DCS - EBD OPERATIONS EMPIRE ST PLAZA CORE BLDG 1, 2ND FL'.
	AGENCY_ADDR3	pic x(35)	35	172	207	168	202	Bea_Dept_Contct	Address3	char 35	Address3 of Agency	If Benefit_Program begins with 'A', 'M' or 'P', relate Deptid to Location., use Address3. Else set to ' '.
	AGENCY_CITY	pic x(30)	30	208	238	203	232	Bea_Dept_Contct	City	char 30	City of Agency address	If Benefit_Program begins with 'A', 'M' or 'P', relate Deptid to Location, use City. Else set to 'ALBANY'
	AGENCY_STATE	pic x(6)	6	239	245	233	238	Bea_Dept_Contct	State	char 6	State of Agency address	If Benefit_Program begins with 'A', 'M' or 'P', relate Deptid to Location, use State. Else set to 'NY'
	AGENCY_ZIP	9(10)	10	246	256	239	248	Bea_Dept_Contct	Zip	char 10	Zip of Agency address	If Benefit_Program begins with 'A', 'M' or 'P', relate Deptid to Location, use Zip. Else set to '12239'



Sample Empire Plan Card File Layout –  
Agreement # C000730

	Field-Name	Attributes	Field Length	From	To	From	TO	PS Record	PS Field Name	PS Attribute	Value	Mapping Notes
REPORT_DATA	RUN_DATE_MM	9(2)	2	257	259	249	250				Card producer to populate this field with the Current Process Month Date.	Card producer to populate this field with the Current Process Month Date.
	RUN_DATE_DD	9(2)	2	260	262	251	252				Card producer to populate this field with the Current Process Day Date.	Card producer to populate this field with the Current Process Day Date.
	AGENCY_NUM	pic 9(10)	10	263	273	253	262	Job	Deptid	char 10	Prefix '01'(NY) or '02'(PA) followed by the enrollee's agency code.	If Benefit_Program begins with 'A', 'M' or 'P', and if Company = 'NYS' then set to '01' plus Deptid (trim to 7 positions); else Set to '0100001' If Benefit_Program begins with 'A', 'M' or 'P', and if Company = 'PA' then set to '02' plus Deptid (trim to 7 positions).
DEPENDENT_ADR_NAME	DEPENDENT_NAME	pic x(50)	50	274	324	263	312	Dependent_Benef	Name	char 50	If the record is for a dependent, this field should be set to dependent's name, otherwise it should be left blank	Format Name to Last Name (comma) (space) First Name (space) Middle Initial
	SAME_ADDRESS_EMPL	pic x(1)	1	325	326	313	313	Dependent_Benef	Same_address_empl	char 1	'Y' if same address as employee. 'N' if address different from employee. Field will be populated for dependents only.	This field will be used to determine if a different set of cards need to be printed because the dependent has a different address
CONTRACT_ADR_NAME	CNTR_HOLDER_NAME	pic x(50)	50	327	377	314	363	Names	Name	char 50	This field will always contain the contract holder's name	Format Name to Last Name (comma) (space) First Name (space) Middle Initial
CARDHOLDER_ADDRESS	MEMBER_ADDR1	pic x(35)	35	378	413	364	398	Addresses Dependent_Benef	Address1	char 35	Address1 of enrollee	
	MEMBER_ADDR2	pic x(35)	35	414	449	399	433	Addresses Dependent_Benef	Address2	char 35	Address2 of enrollee	
	MEMBER_CITY	pic x(30)	30	450	480	434	463	Addresses Dependent_Benef	City	char 30	City of enrollee	
	MEMBER_STATE	pic x(6)	6	481	487	464	469	Addresses Dependent_Benef	State	char 6	State of enrollee	
	MEMBER_ZIP	9(10)	10	488	498	470	479	Addresses Dependent_Benef	Zip	char 10	Zip of enrollee	
	COUNTRY	pic x(3)	3	499	502	480	482	Addresses Dependent_Benef	COUNTRY	char 3	Country of enrollee	

NOTE: All character data is required to be uppercase

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Department of  
Civil Service

Sample SEHP and Excelsior Card File Layout –  
Agreement # C000730

1. **Record Layout**

The text file will be in a .txt format and will be fixed length.

Field Name	Number of Chart	End Point	Comments
record_number	7	7	
card_nbr	9	16	Alternate ID
Filler	1	17	
copay_code_text	10	27	Copay Code
Filler	1	28	
copay_code	2	30	Send an X (not used for these groups)
Filler	1	31	
cardholder_name	50	81	
Filler	1	82	
covrg_cd	1	83	F or I
Filler	2	85	
agency_name	30	115	
Filler	1	116	
agency_address1	35	151	
agency_address2	35	186	
agency_address3	35	221	
agency_city	30	251	
agency_state	6	257	
agency_postal	10	267	
Filler	10	277	
card_type	3	280	Dup
Filler	1	281	
Prod_Indicator	2	283	begins with 01 for state agencies and 02 for PA
agency_num	8	291	also known as "Agency Code"

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Department of  
Civil Service

Sample SEHP and Excelsior Card File Layout –  
Agreement # C000730

Field Name	Number of Chart	End Point	Comments
Filler	1	292	
cardholder_name2	50	342	
same_addr_empl	1	343	blank if card for individual coverage; Y if same address as enrollee; N if dependent has different address
cntr_holder_name	50	393	
Filler	1	394	
agency_email	70	580	

**2. Business Rules for File Processing**

When the Contractor processes a file, a confirmation notice must be sent to DCS, detailing the file used, records processed, and number of ID cards produced for each product break. The confirmation notice must also indicate if there are any additional reports available for retrieval.

**2.1. Error Reports**

Records that do not meet all of the following conditions are considered Errors:

- 1) If these fields are blank:

card_nbr	cntr_holder_name	member_state
Prod_Indicator	member_address1	member_postal
cardholder_name	member_city	

## ATTACHMENT 11



### Sample SEHP and Excelsior Card File Layout – Agreement # C000730

- 2) If the Prod\_Indicator does not start with either 01 or 02

An electronic error report will be generated and posted on the Vendor's FTP site. The Account Manager will notify Civil Service via email that an error report is available for his/her retrieval. The error report will populate the entire record from the file along with the error code and the reason for the error. Name the file E\_[name of file processed].txt

#### **2.2. Return File**

Contractor will generate a return file for every member file processed. The return file will be named R\_[name of file].txt and contain the data received in the original member file with two appended fields. The two fields will contain the processed date and the estimated mail date. Leave those dates blank if the record errored. Each field will be in the format of mm/dd/yyyy.

#### **2.3. Mailing**

- ID cards will be mailed out via:
  - o First Class, no automation

### **3. Business Rules for ID Cards**

Contractor will be producing laminated ID cards for DCS. The ID cards will be printed on off-set printed stock with variable data lasered onto them. There will be two offset printed stocks. Files will be transferred to Contractor's FTP site.

- There are two product types – SEHP and Excelsior. Look at the Prod\_Indicator field to determine which product the record belongs to.
  - o 01 = SEHP
  - o 02 = Excelsior
- Group families by matching the "card\_nbr I," "member\_address 1 I," "member\_city I," "member\_state I," "member\_postal" fields.
- Address the piece to the "cntr\_holder\_name" field. If there are different names within a family, the program will randomly pick one to address to.
- The only variables are the name and ID# on the cards. All other text will be static on the front and back of the ID card.
- Same static text will be used for all ID cards within each product.

ATTACHMENT 11



**Sample SEHP and Excelsior Card File Layout –  
Agreement # C000730**

**3.1. SEHP**

- Each member of the family will get their own ID card.
- Laser the order of the family by lowest to highest “record\_number” field.
- If there is an odd number of family members, print the word “VOID” on the last ID card.

**3.2. Excelsior**

- Families will be grouped together by matching the “card\_nbr”, “member\_address1”, “member\_city”, “member\_state”, “member\_postal” fields. List dependents from lowest to highest “record\_number.”
- The second card of the carrier will always duplicate the first card.  
If there are more than 5 members in the family, add a second carrier with the lowest “record\_number” member repeated first, then continue to the rest of the family.

Field Name	Number of Chart	End Point	Comments
member_state	6	500	
member_postal	10	510	
agency_email	70	580	



Department of  
Civil Service

Employee Benefit Cards Production Scenarios–  
Agreement # C000730

Scenario	Scenario Type	Enrollee (Name on all EBC's)	Dependents	# of Addresses per Card Request	# of Cards Issued (Up to Four Cards* per Card Carrier)	# of Names that appear on Card (Maximum Six** Names per Card)	# of Card Carriers	# of Envelopes (One Card Carrier per Envelope)
A	Individual	1	0	1	1	1	1	1
B	Family	1	up to 5	1	2	up to 6**	1	1
C	Family	1	6 to 10	1	4	up to 6**	1	1
D	Family	1	3	<b>2 Addresses Total</b> (1) Enrollee/One Dep (2) Enrollee/Two Deps	<b>4 Cards Issued</b> 2 Cards 2 Cards	<b>2 Sets of Cards</b> Set (1) Two Names - Enrollee/Dep Set (2) Three Names Enrollee/Two Dependents	2	2
E	Family	1	4	<b>4 Addresses Total</b> (1) Enrollee (2) Enrollee/Two Dep (3) Enrollee/One Dep (4) Enrollee/One Dep	<b>8 Cards Issued</b> 2 Cards per Address	<b>4 Sets of Cards</b> Set (1) One Name - Enrollee Set (2) Three Names - Enrollee/Two Dep Set (3) Two Names - Enrollee/Dep Set (4) Two Names	4	4
F	Family	1	7	<b>3 Addresses Total</b> (1) Enrollee/Three Dependents (2) Enrollee/Three Dependents (3) Enrollee/One Dep	<b>6 Cards Issued</b> 2 Cards per Address	<b>3 Sets of Cards</b> Set (1) Three Names - Enrollee/Two Dep Set (2) Three Names - Enrollee/Two Dep Set (3) One Name - Enrollee/One Dep	3	3

\* Excelsior card carriers hold a maximum of two (2) cards.

\*\* Excelsior Cards contain a maximum of five (5) names.