



Department of Civil Service

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

EMPLOYEE BENEFITS DIVISION

DISPUTE RESOLUTION PROGRAM

AGREEMENT #C000690

between

**NEW YORK STATE
DEPARTMENT OF CIVIL SERVICE**

and

NATIONAL MEDICAL REVIEWS, INC.

AGREEMENT NO. C000690

THIS Agreement is entered into by and between New York State Department of Civil Service (“Department” or DCS), having its principal office at Empire State Plaza, Agency Building #1, Albany, NY 12239 and National Medical Reviews, Inc. (“Contractor”), a corporation authorized to do business in the State of New York with a principal place of business located 607 C Louis Drive, Warminster, PA 18974, and collectively referred to as “the Parties.”

WITNESSETH

WHEREAS, Section 88-C of the Workers' Compensation Law, as amended by Chapter 103 of the laws of 1981, provides for workers' compensation coverage of State employees; and

WHEREAS, the Department, has entered into an insuring agreement with the New York State Insurance Fund, contract #C177594, securing the State's liability for the payment of workers' compensation in accordance with the Workers' Compensation Law; and

WHEREAS, on June 15, 2016, the Department of Civil Service issued a Request for Proposals (RFP) entitled, “Dispute Resolution Program,” to secure the services of a qualified organization to review conflicting medical opinions (Appeals) regarding an Employee’s degree of disability; and

WHEREAS, after thorough review and evaluation by the Department of proposals received in response to the RFP, the Contractor’s proposal was selected as representing the best value to the State; and

WHEREAS, the Department, in reliance upon the expertise of the Contractor, desires to engage the Contractor to deliver the Dispute Resolution Program Services, pursuant to the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual promises set forth below, the Parties agree as follows:

ARTICLE I: DEFINITION OF TERMS

1.1.0 Affiliate means a person or organization which, through stock ownership or any other affiliation, directly, indirectly, or constructively controls another person or organization, is controlled by another person or organization, or is, along with another person or organization, under the control of a common parent.

-
- 1.2.0 AG** means the New York State Attorney General's Office.
- 1.3.0 Agreement or Contract** means the Agreement entered into between the Parties resultant from this RFP.
- 1.4.0 Appeal** means a request that is submitted with required supporting documentation from an Employee's Treating Physician to the Contractor selected as a result of this RFP, for a Medical Documentation Review of conflicting medical determinations regarding an Employee's degree of disability.
- 1.5.0 Appeal Period** means three (3) Business Days for Group 1 Employees and ten (10) calendar Days for Group 2 Employees from the day the Employing Agency notifies the Employee of the Light Duty Assignment or Modified Duty Assignment determination. If the Employee's notification to return to work occurs prior to noon, that day is the first day of the Appeal Period. If such notification occurs at noon, after noon, or on a non-Business Day, the next Business Day is the first day of the Appeal Period.
- 1.6.0 Appeal Request Form** means a form designed by the Contractor and approved by the Department, which must be used by the Treating Physician to file an Appeal and, when properly completed, provides sufficient information for the Contractor to perform a Medical Documentation Review.
- 1.7.0 Board** means the Workers' Compensation Board, which is the State agency responsible for interpreting the Workers' Compensation Law, and making final determinations on the occupational nature of an Employee's injuries and the amount of associated indemnity benefits.
- 1.8.0 Business Days** means every Monday through Friday, except for those days designated as Business Holidays.
- 1.9.0 Business Holidays** means legal Holidays observed by the State.
- 1.10.0 Calendar Year/Annual** means a period of 12 months beginning with January 1 and ending with December 31.
- 1.11.0 Commissioner** means the Commissioner of the New York State Department of Civil Service.
- 1.12.0 Confidential Information (CI)** means any information, including demographic information collected from an Employee that relates to the past, present or future physical or mental health

or condition of an Employee or to the provision of medical or related health care to an Employee or that identifies the Employee or can be used to identify the Employee.

- 1.13.0 Contract or Agreement** means the Agreement entered into between the Parties resultant from this RFP.
- 1.14.0 Contractor** means the successful Offeror selected as a result of the evaluation of Offeror's Proposals submitted in response to this RFP and who executes a Contract with the Department to provide Program Services.
- 1.15.0 Day(s)** mean calendar Days unless otherwise noted.
- 1.16.0 Department or DCS** means the New York State Department of Civil Service.
- 1.17.0 Dispute Resolution Program or DRP** means the New York State Program that provides covered Employees an opportunity for a neutral third party Medical Documentation Review of conflicting medical reports regarding an Employee's degree of disability.
- 1.18.0 Employee** means a person who is appointed to one of the Employing Agencies delineated in Section I of the RFP, who is in a position contained within the: Security Services Unit (represented by NYSCOPBA), Security Supervisors Unit (represented by Council 82, AFSCME, AFL-CIO), the Agency Police Services Unit (represented by PBANYS), or the Professional Services Negotiating Unit (represented by United University Professions). Employee also means a person who is appointed as a Member of the Division of New York State Police who is in a position contained within the State Police Troopers Unit [represented by the Police Benevolent Association of New York State Troopers, Inc. (PBA)], State Police Investigation Unit [represented by the NYS Police Investigators Association, (NYSPIA), Local 4, I.U.P.A., AFL-CIO], the State Police Commissioned/ Non-Commissioned Officers Unit [represented by the Police Benevolent Association of New York State Troopers, Inc. (PBA)], or who is designated Management/Confidential.
- 1.19.0 Employer** means "Employer" as defined in 4 NYCRR Part 73, as amended.
- 1.20.0 Employing Agency** means one of the organizational entities of the State of New York as described in Section I of this RFP, which employs persons eligible to participate in the DRP.
- 1.21.0 ET** means prevailing Eastern Time.

-
- 1.22.0 Evaluating Physician** means a physician licensed and/or registered with the appropriate licensing and/or disciplinary agency by the Fund to determine the Employee's degree of disability, upon which the Employing Agency's management decides if the Employee should return to work in light or full duty capacity. For off-duty injuries/illnesses of Group 2 Employees, the Evaluating Physician is the Staff Physician of the Division of New York State Police.
- 1.23.0 Fund** means the State Insurance Fund, the State agency that acts as the State's workers' compensation insurance carrier.
- 1.24.0 GOER** means the New York State Governor's Office of Employee Relations.
- 1.25.0 Group 1** means Employees belonging to the Security Services Unit, Security Supervisors Unit, Agency Police Services Unit, and Professional Services Negotiating Unit.
- 1.26.0 Group 2** means Employees of the State Police Troopers Unit, State Police Investigation Unit, State Police Commissioned/Non-Commissioned Officers Unit, and the State Police Management/Confidential Group.
- 1.27.0 HIPAA** means Health Insurance Portability and Accountability Act of 1996, as amended.
- 1.28.0 Key Subcontractor(s)** means those vendors with whom the Contractor subcontracts to provide Program Services and incorporates as a part of the Contractor's Project Team. Key Subcontractors include all vendors who will provide \$100,000 or more in Project Services over the term of the Agreement that results from this RFP, as well as any vendor who will provide Project Services in an amount lower than the \$100,000 threshold, and who is a part of the Contractor's account team.
- 1.29.0 Labor Agreement(s)** means the negotiated collective bargaining agreements between the State and the Security Services Unit (represented by NYSCOPBA), and the Security Supervisors Unit (represented by Council 82, AFSCME, AFL-CIO), the Agency Police Services Unit (represented by Council 82, AFSCME, AFL-CIO), and the Professional Services Negotiating Unit (represented by United University Professions). For purposes of this RFP, this term also includes the agreements between the State and the State Police Troopers Unit [represented by the Police Benevolent Association of New York State Troopers, Inc. (PBA)], the State Police Investigation Unit [represented by the NYS Police Investigators Association (NYSPIA), Local 4, I.U.P.A., AFL-CIO], the State Police Commissioned/Non-Commissioned Officers Unit [represented by the Police Benevolent Association of New York State Troopers, Inc. (PBA)], and the State Police Management/Confidential Group.

-
- 1.30.0 Light Duty Assignment** means an assignment for a Group 1 Employee that is within the Employee's title and at the Employee's work location. In cases where minimum staffing levels have been established, a Light Duty Assignment will not be used to affect existing minimum staffing levels.
- 1.31.0 MDP** means the Modified Duty Policy by which the Division of the State Police assigns Employees (Group 2) recovering from on and off-duty injuries or illnesses to Modified Duty Assignments.
- 1.32.0 Medical Documentation Review** means the Contractor's review of the conflicting medical reports submitted by the Employee's Treating Physician and the Evaluating Physician.
- 1.33.0 MEP** means the Medical Evaluation Program, which is the voluntary program that provides injured employees an expedited medical consultant examination to determine an Employee's (Group 1) degree of disability upon which the Employing Agency's management makes a decision regarding the Employee's eligibility for Light Duty Assignment.
- 1.34.0 Modified Duty Assignment** means an assignment for a Group 2 Employee to perform administrative duties including, but not limited to: desk duty, records management, inventory control, non-criminal investigations, communications and other tasks not related to patrol functions, field supervision, or active criminal case investigation.
- 1.35.0 MWBE** means Minority-and Women-Owned Business Enterprises.
- 1.36.0 NYS or State** means the State of New York (including the New York State Department of Civil Service).
- 1.37.0 Offeror** means any responsible and eligible entity submitting a responsive Proposal to this RFP. It shall be understood that references in the RFP to "Offeror" shall include said entity's proposed Key Subcontractor or Affiliates, if any.
- 1.38.0 OSC** means the New York State Office of the State Comptroller.
- 1.39.0 Pass Day** means day of the week the Employee is not scheduled to work.
- 1.40.0 President** means the President of the Civil Service Commission and the Commissioner of the Department.
- 1.41.0 Program** means the New York State Dispute Resolution Program (DRP).

-
- 1.42.0 Program Review Period** means a period of seven (7) calendar Days from the day the Contractor receives a Valid Appeal from the Treating Physician during which the Medical Documentation Review must be completed.
- 1.43.0 Program Services or DRP Services** means all of the Services to be provided by the Contractor as set forth in this RFP.
- 1.44.0 Proposal or Submissions** means the Contractor's Administrative Proposal, Technical Proposal and Cost Proposal, including all responses to supplemental requests for clarification, information, or documentation submitted during the course of the Procurement.
- 1.45.0 Reviewing Physician (RP)** means a physician licensed and/or registered with the appropriate licensing and/or disciplinary agency, who has been designated by the Contractor to perform the Medical Documentation Review of the Treating and Evaluating Physicians' reports, and other documentation necessary to render a decision, which will support either the Treating or Evaluating Physicians' determination of the Employee's degree of disability. The RP cannot be the Treating or Evaluating Physician.
- 1.46.0 RFP or Procurement** means the Request for Proposals, entitled "New York State Dispute Resolution Program," dated June 15, 2016.
- 1.47.0 Service Level Standard** means the Department's expected performance level of service that the Contractor must meet or exceed for the New York State Dispute Resolution Program.
- 1.48.0 Services** means the Program services including, but not limited to, the Workers' Compensation Dispute Resolution Program Medical Documentation Review to be provided by the Contractor as required by the Dispute Resolution Program as set forth in this RFP.
- 1.49.0 Staff Physician** means the physician(s) employed by the New York State Police responsible for determining Employees' fitness for duty.
- 1.50.0 State** means the State of New York.
- 1.51.0 Transition Plan** means a written plan for transition, which outlines, at a minimum, the tasks, milestones and deliverables associated with transitioning the Program to a new contractor.
- 1.52.0 Treating Physician** means the physician chosen by the Employee to provide direct care for his/her disability.

1.53.0 Utilization Review Accreditation Commission (URAC) means an independent, nonprofit organization, which offers accreditation to healthcare organizations meeting its requirements and standards.

1.54.0 Valid Appeal means an Appeal filed by a Treating Physician on behalf of an eligible Employee that contains complete medical records and supporting information, including the Appeal Request Form, needed by the Reviewing Physician to issue a determination in support of either the Employee's Treating or Evaluating Physician's medical opinion regarding the Employee's degree of disability.

1.55.0 Work Day means any day the Employee is scheduled to report to work. Work Days include Saturdays, Sundays and State holidays.

ARTICLE II: AGREEMENT DURATION AND AMENDMENTS

2.1.0 The Agreement shall be subject to and effective upon the approval of the New York State Attorney General's Office ("AG") and the NYS Office of the State Comptroller ("OSC"). The term of the Agreement shall include an implementation period followed by five (5) years of Program Services. It is the Department's intent that this implementation period shall begin upon OSC approval of the Agreement with all other contractual obligations to begin on February 1, 2017 through and including January 31, 2022, and subject to the termination provisions contained herein.

2.2.0 The Agreement is subject to amendment(s) only upon mutual consent of the Parties, reduced to writing and approved by the AG and OSC.

ARTICLE III: INTEGRATION

3.1.0 This Agreement, including all Exhibits, copies of which are attached hereto and incorporated by reference, constitutes the entire Agreement between the Parties. All prior Agreements, representations, statements, negotiations, and undertakings are superseded hereby.

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

ARTICLE IV: DOCUMENT INCORPORATION AND ORDER OF PRECEDENCE

4.1.0 The Agreement consists of:

4.1.1 The body of the Agreement (that portion preceding the signatures of the Parties in execution) and any amendments thereto;

4.1.2 Appendix A – Standard Clauses for all New York State Contracts;

4.1.3 Appendix B – Standard Clauses for all Department of Civil Service Contracts;

4.1.4 Appendix C – Third Party Connection and Data Exchange Agreement; Appendix C-1 – ITS-AGS: Information Security;

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

4.1.6 Appendix D-1 - Minority and Women-Owned Business Enterprises-Equal Employment Opportunity Policy Statement;

4.1.7 Appendix D-2 –MWBE Utilization Reporting Responsibilities under Article 15-A

4.1.8 The following Exhibits attached and incorporated by reference to the body of the Agreement:

4.1.8a Exhibit A: which includes the MacBride Act Statement; and the Non-Collusive Bidding Certification;

4.1.8b Exhibit B: the Request for Proposals entitled, “Dispute Resolution Program,” dated June 15, 2016; and Amendments dated June 21, 2016; and Exhibit B-1, the official Department response to questions raised concerning the RFP;

4.1.8c Exhibit C: the Contractor’s Proposal and Exhibit C-1: the official transcript of the Management Interview and related materials clarifying the Contractor’s Proposal; and

4.1.8d Exhibit D: the Schedule of Valid Appeal Fee.

4.2.0 In the event of any inconsistency in, or conflict among, the document elements of the Agreement identified above, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the following order:

4.2.1 First, Appendix A - Standard Clauses for all New York State contracts;

4.2.2 Second, Appendix B - Standard Clauses for all Department of Civil Service contracts;

4.2.3 Third, Appendix C – Third Party Connection and Data Exchange Agreement; Appendix C-1 ITS-AGS: Information Security

4.2.4 Fourth, Appendix D: Participation by Minority Group Members and Women With Respect to State Contracts: Requirements and Procedures; Appendix D-1-Minority and Women-Owned Business Enterprises-Equal Employment Opportunity Policy Statement; and Appendix D-2: MWBE Utilization Reporting Responsibilities under Article 15-A;

4.2.5 Fifth, any Amendments to the body of the Agreement;

4.2.6 Sixth, the body of the Agreement;

4.2.7 Seventh, Exhibit A – the MacBride Act Statement and the non-collusive bidding certification;

4.2.8 Eighth, Exhibit B – the Request for Proposal entitled, “Dispute Resolution Program,” dated June 15, 2016; and Amendments dated June 21, 2016; and Exhibit B-1, the official Department response to questions raised concerning the RFP;

4.2.9 Ninth, Exhibit C – the Contractor’s Proposal and Exhibit C-1, the official transcript of the Management Interview and related materials clarifying the Contractor’s Proposal;

4.2.10 Tenth, Exhibit D, the Schedule of Valid Appeal Fee.

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

ARTICLE V: LEGAL AUTHORITY TO PERFORM

5.1.0 The Contractor shall maintain appropriate corporate and/or legal authority, which shall include but is not limited to the maintenance of an administrative organization capable of delivering the Program Services in accordance with the Agreement and the authority to do business in the

State of New York or any other governmental jurisdiction in which the Program Services are to be delivered.

- 5.2.0** The Contractor agrees that it shall perform its obligations under this Agreement in accordance with all applicable Federal and NYS Laws, rules and regulations, policies and/or guidelines now or hereafter in effect.
- 5.3.0** The Contractor shall provide the Department with immediate notice in writing of the initiation of any legal action or suit which relates in any way to the Agreement, or which may affect the performance of Contractor's duties under the Agreement.

ARTICLE VI: PROGRAM SERVICES

- 6.1.0** The Contractor shall provide all of the Program Services as set forth herein this Article VI of the Agreement for the entire term of the Agreement in such a manner so as to be in compliance with the terms and conditions set forth in this Agreement. All Program Services shall be provided in accordance with the New York State Civil Service Law and Worker's Compensation Law and their implementing regulations, and other NYS and Federal Law as may be applicable. In addition, the Contractor shall deliver the Program Services in such a manner so as to comply with all provisions of this Agreement. The Contractor may provide certain services through key subcontracts with the prior review and approval of the Department. Each subcontract entered into with a corporate entity separate from the Contractor for the purpose of delivering Program Services must be maintained throughout the term of the Agreement unless such change is approved in writing by the Department. The Department must be explicitly identified as the intended third party beneficiary of the subcontract. The Contractor must maintain significant financial, legal, and audit oversight of any of its Key Subcontractors. The Contractor remains fully responsible for all Services and actions performed under this Agreement. The Contractor shall submit all key subcontracts to the Department for its approval. The Contractor shall submit all such key subcontracts with no redactions to the Department before execution for its review and approval. **(Note: Costs/Fees for all Services required under this Agreement shall be included in the Contractor's Valid Appeal Fee).**

6.2.0 Account Team

-
- 6.2.1** The Contractor must maintain, for the entire term of the Agreement, an organization of sufficient size with the skills and experience necessary to administer, manage, and oversee all aspects of the Program during implementation, operation, and transition.
- 6.2.2** The Contractor must propose a Program manager with the ability to address direct inquiries by the Department within one (1) Business Day, for the entire term of the Agreement. It is preferred that the Program manager possess at least five (5) years of experience serving as a Program manager. The Contractor must advise the Department immediately if replacement of the Program manager is contemplated during the term of the Agreement.
- 6.2.3** The Contractor must ensure that there is a process in place for the account team to gain immediate access to appropriate corporate resources and senior management necessary to meet all Program requirements and to address any issues that may arise during the performance of the Agreement.
- 6.2.4** The Contractor's assigned project management team must be experienced, accessible and sufficiently staffed to provide timely responses (1 (one) Business Day) to administrative and clinical concerns, and inquiries posed by the Department.
- 6.2.5** The Contractor's assigned account team must immediately notify the Department of any actual or anticipated events impacting DRP costs and/or the delivery of Services to Employees such as but not limited to legislation, litigation, and operational issues.
- 6.2.6** The Contractor's assigned account team must ensure that the DRP is in compliance with all legislative and statutory requirements. If the Contractor is unable to comply with any legislative or statutory requirements, the Department must be notified in writing immediately. The Contractor must work with the Department to develop accurate DRP material.
- 6.2.7** The Contractor must work with the Department to develop appropriate customized forms, letters and content for the DRP, including but not limited to an Appeal Request Form, Program brochure, etc. All such communications must be approved by the Department prior to their distribution.

6.3.0 Implementation Plan

6.3.1 The Agreement includes an implementation period beginning upon AG and OSC approval of the Agreement. During this time, the Contractor must complete all implementation and start-up activities, including, but not limited to, those specified activities set forth in this Article VI of this Agreement, no later than January 31, 2017, so that, effective February 1, 2017, the Contractor can assume full operational responsibility for the Program. During the implementation period, the Contractor must

6.3.1a Establish a comprehensive Network of DRP Reviewing Physicians, which meets the requirements as set forth in Section 6.4.0 of this Agreement to conduct Medical Documentation Reviews;

6.3.1b Develop an Appeal Request Form which will be used by covered Employees and their Treating Physicians to file an Appeal under the DRP, with such form subject to approval by the Department;

6.3.1c Distribute to State Agencies with Employees covered by the DRP, the Appeal Request Form in sufficient quantities, in both a paper and electronic format. Filing instructions, including Appeal eligibility and filing deadlines shall accompany the Appeal Request Form; and

6.3.1d Train staff to track Appeals, initiate the Medical Documentation Review process, and report the outcome of the Medical Documentation Reviews within the specified Program Review Period.

6.4.0 Reviewing Physician Network

6.4.1 The Contractor must establish and maintain a network of Reviewing Physicians (RPs) that meets the following requirements:

6.4.1a RPs must be authorized by the New York State Workers' Compensation Board (WCB) as treating or consulting physicians pursuant to Workers' Compensation Law;

6.4.1b RPs must have specialized expertise in the treatment and/or diagnosis of work-related injuries/illnesses;

6.4.1c RPs must be certified specialists in the appropriate field when that certification is necessary for making and evaluating degree of disability determinations;

6.4.1d The network must have no less than three (3) certified physicians from each of the following specialties: Cardiology, Chiropractic, Neurology, Orthopedics, and Physiatry. Additional physicians must be added to the network, as needed, based on Appeal volume and/or specialty; and

6.4.1e RPs must testify before the Board when appropriate and necessary.

6.4.2 The Contractor must contract with RPs. This includes negotiating fees and making payments to RPs for services rendered under this Program. RPs shall not look to the Department for payment of any kind.

6.4.3 The Contractor must assure that the RP is not the Staff, Treating, or Evaluating Physician, as defined in this Agreement.

6.4.4 The Contractor must ensure that RPs complete the Medical Documentation Reviews within the appropriate Program Review Period.

6.4.5 The Contractor must ensure that RP's decision to support either the Treating or Evaluating Physician's determination regarding an Employee's degree of disability are based on review of the Employee's medical documentation, reports, and other appropriate documentation, which may include laboratory reports and X-rays, as provided by the Treating and/or Evaluating Physicians. NB: for NYSCOPBA Employees, copies of DCS job descriptions will be provided by the Department.

6.4.6 The Contractor must provide a written report of the Medical Documentation Review decision as to whether the documentation better supports either the Treating or Evaluation Physician's degree of disability determination to the Employee, the Employing Agency, the Treating Physician, the Evaluating Physician, the appropriate Union, and the Fund, if applicable, within the required seven (7) calendar Day Program Review Period. The report must include an Employee identifier and a statement in support of either the Treating or Evaluating Physician's degree of disability determination.

6.5.0 Program Communications

6.5.1 The Contractor must be responsible for all Program communications which shall include, at a minimum, mailing services, telephone and facsimile capabilities, and/or electronic media transmissions for the secure transfer and receipt of information

between the Contractor and the Employee, Treating Physician, Evaluating Physician, Employing Agency, appropriate Union and the Fund.

6.5.2 The Contractor must develop, subject to Department approval, and distribute Program communication material in sufficient quantities to State Agency Personnel Offices in a paper and electronic format, including but not limited to:

6.5.2a An Appeal Request Form which must be used by eligible Employees to file an Appeal under the DRP;

6.5.2b A Program brochure that describes the details of the DRP, including but not limited to, the procedures and eligibility criteria for filing an Appeal; filing instructions, and Program Review Period deadlines; and

6.5.2c Other information or material proposed by the Contractor to assure the effective implementation and delivery of the required Program Services.

6.5.3 The Contractor is responsible for all development, production, and mailing costs incurred to disseminate Program communication materials to the Employee, Treating Physician, Evaluating Physician, Employing Agency, appropriate Union, and the Fund.

6.6.0 Maintenance of Confidential Employee Records

6.6.1 The Contractor shall be responsible for maintaining all Employee records in a confidential manner. Such record keeping must be HIPAA compliant and shall include, at a minimum, a confidential medical case record for each Appeal, which shall include but not be limited to: the Treating Physicians' reports; the Evaluating Physician's reports; and the Reviewing Physician decision. In cases where the required medical documentation to support an Appeal has not been received by the Contractor within ninety (90) days of its receipt of information used to establish the medical case record, the Contractor shall destroy, in a confidential and secure manner, all medical case records and all other records related to the case. If such destruction is not feasible, the Contractor shall limit further uses and disclosures of such confidential information to those purposes that make the return or destruction of the confidential information infeasible.

6.6.2 The Contractor shall use appropriate, documented safeguards to prevent the use or disclosure of Program Confidential Information other than as required by this

Agreement. The Contractor shall maintain a comprehensive written information security program that includes administrative, technical, and physical safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities.

6.7.0 Reporting

6.7.1 The Contractor shall be responsible for preparing and delivering accurate and timely reports, as follows:

6.7.1a Monthly Appeals Summary Report: The Contractor is required to submit a Monthly Appeals Summary Report summarizing, for each employee group, the number of Appeals received, the number of Valid Appeals, the disposition of each completed Appeal, and the number of Appeals billed to the Program. The Contractor should closely follow the format specified by the Department in Exhibit III.E of the RFP. The report is due thirty (30) Days after the end of each month.

6.7.1b Quarterly Medical Documentation Review Summary Report: Each quarter, the Contractor is required to submit a Medical Documentation Review report summarizing, for Group 1 and Group 2, the number of Appeals completed within the applicable Program Review Period, as well as the distribution of Appeals by Reviewing Physician category. The Contractor should closely follow the format specified by the Department in Exhibit III.F of the RFP. The report is due thirty (30) Days after the end of each quarter.

6.7.1c Quarterly EEO Workforce Utilization Compliance Report: Each quarter, the Offeror is required to submit Form EEO-101 Workforce Utilization Compliance Report. The format, frequency, and due dates for such reports, if any, will be specified by the Department to the Offeror during the term of the Agreement that results from this RFP.

6.7.1d Ad Hoc Reporting Requests: The Department may, on occasion, request ad hoc reports or other data analysis to monitor Program Services and contract compliance. The format, frequency, and due dates for such reports, if any, will be specified by the Department to the Contractor during the term of the Agreement.

ARTICLE VII: PERFORMANCE GUARANTEES

The Parties agree that the following guarantees and corresponding credit amounts for failure to meet each Performance Guarantee shall be implemented effective February 1, 2017. The Contractor acknowledges and agrees that failure to perform the service features in such a manner which either meets or exceeds any and/or all of the Performance Guarantee(s) as set forth in this Article and/or fails to make any payment(s) of any such credit amounts for such failure to meet any Performance Guarantee(s) does not relieve the Contractor of the performance of the activities, duties, and obligations as otherwise set forth in the Agreement.

Credit amounts due from the Contractor to the Department for failure to perform any service feature at the Performance Guarantee level as set forth below, and audit credit amounts, as determined pursuant to Article X of this Agreement, shall be made at the time and in such amounts as determined by the Department to be final. Credit amounts are cumulative. Upon such determination, the Department shall notify the Contractor, in writing, and the Contractor shall apply such amounts as a credit against the Valid Appeal Fees within fourteen (14) calendar Days of receiving such written notification from the Department.

7.1.0 Implementation and Start-up Guarantees and Credit Amount

7.1.1 Guarantee: The Contractor guarantees that all Implementation and Start-Up activities will be completed no later than January 31, 2017, so that, effective February 1, 2017, the Contractor can assume full operational responsibility for the Program. For the purpose of this performance guarantee the Contractor must, on February 1, 2017 have in place and operational:

7.1.1a Its comprehensive network of DRP Reviewing Physicians, which meets the requirements set forth in Section 6.4.0 of this Agreement, to conduct Medical Documentation reviews;

7.1.1b Its Appeal Request Form which will be used by covered Employees and their Treating Physicians to file an Appeal under the DRP, with such form subject to approval by the Department;

7.1.1c Distribution to State Agencies with Employees covered by the DRP, the Appeal Request Form in sufficient quantities, in both a paper and electronic format. Filing instructions, including critical Appeal eligibility and filing deadlines shall accompany the Appeal Request Form;

7.1.1d Its trained staff to track Appeals, initiate the Medical Documentation Review process, and report the outcome of the Medical Documentation Reviews within the specified Program Review Period.

7.1.2 Credit Amount: The Contractor's s quoted dollar amount to be credited for each calendar Day that all implementation and Start-Up requirements are not met, beyond January 31, 2017 is [REDACTED]

7.2.0 Reporting Guarantee and Credit Amount

7.2.1 Guarantee: The Contractor guarantees that all accurate management reports, as specified in Section 6.7.0 of this Agreement, will be delivered to the Department no later than their respective due dates, inclusive of the date of receipt.

7.2.2 Credit Amount: The Contractor's quoted amount to be credited against the Valid Appeal Fee for each management report listed in Section 6.7.0 that is not substantially accurate and/or received by its respective due date, is [REDACTED] report for each Business Day between the due date and the date the accurate management report is received by the Department inclusive of the date of receipt.

7.3.0 Reviewing Physician Network Guarantee and Credit Amount

7.3.1 Guarantee: The Contractor guarantees that all Medical Documentation Review decisions will be made within the required Program Review Period. The Program Review Period begins on the date that the Contractor receives complete medical documentation from the Treating and Evaluating Physicians necessary to establish a Valid Appeal.

7.3.2 Credit Amount: The Contractor's quoted amount to be credited against the Valid Appeal Fee for each Business Day beyond the Program Review Period of seven (7) Days, that the Contractor fails to issue a Medical Documentation Review decision, is [REDACTED] per decision for each Business Day between the due date and the date the determination is completed. The Program Review Period begins on the date that the Contractor receives complete medical documentation necessary to establish a Valid Appeal.

ARTICLE VIII: MODIFICATION OF PROGRAM SERVICES

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

ARTICLE IX: DATA SHARING AND OWNERSHIP

- 9.1.0** All claims and other data related to the Program is the property of the State. Upon the request of the Department, the Contractor shall share appropriate data with the Department's consultants.

9.2.0 Except as directed by a court of competent jurisdiction, or as necessary to comply with applicable New York State or federal law, or with the written consent of the Employee, the Contractor shall not share, sell, release, or make the data available to third parties in any manner without the prior consent of the Department. This provision shall survive the expiration of this Agreement.

ARTICLE X: PAYMENT FOR SERVICES RENDERED

10.1.0 The Department agrees to reimburse the Contractor in accordance with the rates, procedures, and time frames provided for in this Article X of this Agreement.

10.2.0 The Contractor shall submit for approval to the Department a monthly invoice, in the format required by the Department. Such invoices shall include, at a minimum, the quantity of Medical Documentation Review determinations, the Valid Appeal Fee, and total amount due for determinations made and shall be submitted to the Department for payment in a timely manner. Upon review of the submitted invoices, and verification of the charges by the Department, the Department will make best efforts to process all acceptable invoices within thirty (30) Days of their receipt; however, failure to make payment within said timeframe shall not be considered a breach of contract. Timeliness of payment and any interest to be paid to the Contractor for late payment shall be governed by Article XI-A of the State Finance Law.

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

ARTICLE XI: USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION

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

11.2.0 The Contractor acknowledges that the Department administers on behalf of New York State several group health plans as that term is defined in HIPAA's implementing regulations at 45 CFR Parts 160 and 164, and that each of those group health plans consequently is a "covered entity" under HIPAA. These group health plans include NYSHIP, which encompasses the Empire Plan as well as participating health maintenance organizations; the Dental Plan, and the Vision Plan. In this capacity, the Department is responsible for the administration of these "covered entities" under HIPAA. The Contractor further acknowledges that the Department has designated NYSHIP and the Empire Plan as an Organized Health Care Arrangement (OHCA). The Contractor further acknowledges that the Contractor is a HIPAA "business associate" of the group health plans identified herein as "covered entities" as a consequence of the Contractor's provision of certain services to and/or on behalf of the Department as administrator of the "covered entities" within the context of the Contractor's performance under this Agreement, and that the Contractor's provision of such services may involve the disclosure to the Contractor of individually identifiable health information from the Department or from other parties on behalf of the Department, and also may involve the Contractor's disclosure to the Department of individually identifiable health information as a consequence of the Services performed under this Agreement. To the extent Contractor acts as a HIPAA "business associate" of the group health plans identified as "covered entities" in this Section 11.2.0, Contractor shall adhere to the requirements as set forth in this Article XI of this Agreement.

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

11.4.0 *Nondisclosure of the Department's PHI:* The Contractor shall not create, receive, maintain, access, transmit, use or further disclose the Department's PHI otherwise than as permitted or

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

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

11.6.0 Breach Notification

11.6.1 Reporting: The Contractor shall report to the Department any breach of unsecured PHI, including any use or disclosure of the Department's PHI otherwise than as provided for by this Agreement, of which the Contractor becomes aware. An acquisition, access, transmission, use or disclosure of the Department's PHI that is unsecured in a manner not permitted by HIPAA or this Agreement is presumed to be a breach unless the Contractor demonstrates that there is a low probability that the Department's PHI has been compromised based on the Contractor's risk assessment of at least the following factors: (i) the nature and extent of the Department's PHI involved, including the types of identifiers and the likelihood of re-identification; (ii) the unauthorized person who used the Department's PHI or to whom the disclosure was made; (iii) whether the Department's PHI was actually acquired or viewed; and (iv) the extent to which the risk to the Department's PHI has been mitigated. Further, the Contractor shall report to the Department any security incident of which it becomes aware, subject to Section 11.6.5 of this Agreement. "Security incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information, or interference with system operations in an information system. The Contractor shall notify the Department within five (5) Business Days of the

date the Contractor becomes aware of the event for which reporting is required by this Section 11.6.1 of this Agreement.

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

11.6.2a the date of the breach incident;

11.6.2b the date of the discovery of the breach;

11.6.2c a brief description of what happened;

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

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

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

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

11.6.3 The Department will be responsible to provide notification to individuals whose unsecured PHI has been or is reasonably believed to have been accessed, acquired or disclosed as a result of a breach, as well as the Secretary of the U.S. Department of Health and Human Services and the media, as required by 45 CFR Part 164.

11.6.4 The Contractor shall maintain procedures to sufficiently investigate the breach, mitigate losses, and protect against any future breaches, and to provide a description of these procedures and the specific findings of the investigation to the Department upon request.

11.6.5 For purposes of this Agreement, "Unsuccessful Security Incidents" include activity such as pings and other broadcast attacks on business associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so

long as no such incident results in unauthorized access, use or disclosure of electronic PHI.

11.6.6 The Contractor shall mitigate, to the extent practicable, any harmful effects from any use or disclosure of PHI by the Contractor not permitted by this Agreement.

11.7.0 Associate's Agents: The Contractor shall require all of its agents or Key Subcontractors to whom it provides the Department's PHI, whether received from the Department or created or received by the Contractor on behalf of the Department, to agree, by way of written contract or other written arrangement, to the same restrictions and conditions on the access, use, and disclosure of PHI that apply to the Contractor with respect to the Department's PHI under this Agreement.

11.8.0 Availability of Information to the Department: The Contractor shall make available to the Department such information and documentation as the Department may require regarding any disclosures of PHI by the Contractor to fulfill the Department's obligations to provide access to, provide a copy of, and to account for disclosures of the Department's PHI in accordance with HIPAA and its implementing regulations. The Contractor shall provide such information and documentation within a reasonable amount of time of its receipt of the request from the Department. The Contractor must provide the Department with access to the Department's PHI in the form and format requested, if it is readily producible in such form and format; or if not, in a readable hard copy form or such other form and format as agreed to by the Parties, provided, however, that if the Department's PHI that is the subject of the request for access is maintained in one or more designated record sets electronically and if requested by the Department, the Contractor must provide the Department with access to the requested PHI in a readable electronic form and format.

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

11.10.0 Internal Practices: The Contractor shall make its internal practices, policies and procedures, books, records, and agreements relating to the use and disclosure of the Department's PHI, whether received from the Department or created or received by the Contractor on behalf of the Department, available to Department and/or the Secretary of the U.S. Department of Health and

Human Services in a time and manner designated by the Department and/or the Secretary for purposes of determining the Department's compliance with HIPAA and its implementing regulations.

11.11.0 Termination

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

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

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

11.13.0 *Miscellaneous:*

11.13.1 *Amendments:* This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in writing duly signed by authorized representatives of the Parties and approved by the NYS AG and OSC. The Parties agree to take such action

as is necessary to amend this Agreement from time to time as is necessary to achieve and maintain compliance with the requirements of HIPAA and its implementing regulations.

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

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

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

ARTICLE XII: NOTICES

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

12.1.1 via certified or registered United States mail, return receipt requested;

12.1.2 by facsimile transmission;

12.1.3 by personal delivery;

12.1.4 by expedited delivery service; or

12.1.5 by e-mail.

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

New York State Department of Civil Service

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

Name: Meredith Merlini
Title: Vice President
Address: 607 C Louis Drive
Warminster, PA 18974
Telephone Number: 215-352-7800 Ext 121
Facsimile Number: 215-352-0069

E-Mail Address: [REDACTED]

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

The Parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) Days written notice to the other party sent in accordance herewith. The Parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the Parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

ARTICLE XIII: NOTICE TO THE STATE

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

ARTICLE XIV: SUSPENSION OF WORK

14.1.0 The Department reserves the right to suspend any or all activities under the Agreement, at any time, in the best interests of the State or the Department. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze on State spending, declaration of emergency, or other such circumstances. Upon issuance of such notice, the Contractor shall comply with the suspension order. Activity may resume at such time as the Department issues a formal written notice authorizing a resumption of work.

ARTICLE XV: GENERAL PROVISION AS TO REMEDIES

15.1.0 The Parties may exercise their respective rights and remedies at any time, in any order, to any extent, and as often as deemed advisable, without regard to whether the exercise of one right or remedy precedes, concurs with or succeeds the exercise of another. A single or partial exercise of a remedy shall not preclude a further exercise of the right or remedy or the

exercise of another right or remedy from time to time. No delay or omission in exercising a right or remedy, or delay, inaction, or waiver of any event of default, shall exhaust or impair the right or remedy or constitute a waiver of, or acquiescence to, an event otherwise constituting a breach or default under the Agreement.

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

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

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

ARTICLE XVI: AUDIT AUTHORITY

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

16.1.0 The Contractor acknowledges that the Department has the authority to conduct financial and performance audits of the Contractor's delivery of Program Services in accordance with the Agreement and any applicable State and federal statutory and regulatory authorities;

16.2.0 Such audit activity may include, but not necessarily be limited to, the following activities:

16.2.1 Review of the Contractor's activities and records relating to the documentation of its performance under this Agreement in areas such as determination of Employee eligibility and application of various Department program administrative features.

16.2.2 Assessment of the Contractor's information, utilization and demographic systems to the extent necessary to verify accuracy of data on the reports provided to the Department in accordance with Section 6.7.0 of this Agreement.

16.3.0 The Contractor shall maintain and make available documentary evidence necessary to perform such reviews. Documentation maintained and made available by the Contractor may include, but is not limited to, source documents, books of account, subsidiary records and

supporting work papers, claim documentation, pertinent contracts, key subcontracts, Provider agreements, and correspondence.

16.4.0 The Contractor shall make available for audit all data in its computerized files that is relevant to and subject to the Agreement. Such data may, at the Department's discretion, be submitted to the Department in machine-readable format, or the data may be extracted by the Department, or by the Contractor under the direction of the Department.

16.5.0 The Contractor shall, at the Department's request, search its files, retrieve information and records, and provide to the auditors such documentary evidence as they require. The Contractor shall make sufficient resources available for the efficient performance of audit procedures.

16.6.0 The Contractor shall comment on the contents of any audit report prepared by the Department and transmit such comments in writing to the Department within 30 Days of receiving any audit report. The response will specifically address each audit recommendation. If the Contractor agrees with the recommendation, the response will include a work plan and timetable to implement the recommendation. If the Contractor disagrees with an audit recommendation, the response will give all details and reasons for such disagreement. Resolution of any disagreement as to the resolution of an audit recommendation shall be subject to the dispute resolution procedures set forth in Appendix B of this Agreement.

16.7.0 If the Contractor has an independent audit performed of the records relating to this Agreement, a certified copy of the audit report shall be provided to the Department within ten (10) Days after receipt of such audit report by the Contractor.

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

ARTICLE XVII: WARRANTIES

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

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

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

17.1.3 Contractor Compliance: To pay, at its sole expense, all applicable permits, licenses, tariffs, tolls and fees and give all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Agreement. Prior to award and during the Agreement term and any extension thereof, the Contractor shall establish to the satisfaction of the Department that it meets or exceeds all requirements of the Agreement and any applicable laws, including but not limited to, permits, insurance coverage, licensing, proof of coverage for workman’s compensation, and shall provide such proof as required by the Department. Failure to do so may constitute grounds for the Department to cancel or suspend the Agreement, in whole or in part, or to take any other action deemed necessary by the Department.

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

ARTICLE XVIII: TERMINATION

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

18.1.0 The State retains the right to cancel this Agreement without cause and in its sole discretion, provided that the Department shall give written notice to the Contractor not less than 30 Days prior to the date upon which termination shall become effective, such notice to be made via registered or certified mail, return receipt requested or hand delivered. The date of such notice shall be deemed to be the date of postmark in the case of mail or the date of hand delivery. This provision should not be understood as waiving the State's right to terminate the Agreement for cause or to stop work immediately for unsatisfactory work, but is supplementary to that provision. In the event of cancellation without cause by the State, the State agrees to negotiate a payment based on time, materials and other documented expenses directly attributable to the Agreement actually expended by the Contractor.

18.2.0 If the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, the State, in its sole discretion, may terminate this Agreement for cause or may exercise such other remedies as shall be available under this Agreement, at law and/or equity.

18.3.0 No delay or omission to exercise any right, power or remedy accruing to the State or the Department upon breach or default by the Contractor under the Agreement shall impair any such right, power or remedy, or shall be construed as a waiver of any such breach or default, or any similar breach or default thereafter occurring, nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers shall be in writing.

18.4.0 In the event of the Contractor's default, in addition to availing itself of specific remedies set forth in the Agreement, the State may pursue all legal and equitable remedies for breach. In addition to pursuing any other legal or equitable remedies, the State shall have the right to take one or more of the following actions:

18.4.1 Terminate the Agreement in whole or in part;

18.4.2 Suspend, in whole or in part, payments due Contractor under the Agreement; and

18.4.3 Pursue equitable remedies to compel Contractor to perform.

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

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

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

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

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

ARTICLE XIX: TRANSITION

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

19.1.1 Transition Period: The transition period shall be determined by the State, and Contractor will be notified of the period in writing. The State shall consult with the Contractor prior to making such determination. The State reserves the right to

subsequently amend the transition period upon 30 Days advance written notice to the Contractor.

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

19.1.3 Transition Services: shall be deemed to include Contractor's responsibility for all tasks and Services outlined in the Contract, and for transferring in a planned manner specified in the Transition Plan all tasks and Services to the State, a third party or the successor contractor. It is expressly agreed between the Parties that the level of service during the transition period shall be maintained in accordance with and shall be subject to all the terms and conditions of the Contract, provided, however, that where, during the transition period, tasks or Services are transitioned to or assumed by the State, a third party or the successor contractor, Contractor shall not be held responsible for the negligent acts or negligent omissions of the State, a third party or the successor contractor or for service degradation resulting from the negligent acts or negligent omissions of the State, a third party or the successor contractor. The transition period shall be determined by the State, and Contractor will be notified of the period in writing. The State shall consult with the Contractor prior to making such determination. The State reserves the right to subsequently amend the transition period upon 30 Days advance written notice to the Contractor.

19.1.4 No Interruption in Service: At all times during the transition period and unless directed otherwise in writing by the State, the Contractor shall continue all contractual obligations set forth in the Agreement until such time as the State (i) has approved the Contractor's proposed Transition Plan, and (ii) an orderly transition to the State, a third party, or the successor Contractor has been completed pursuant to the approved Transition Plan. The Contractor shall be required to meet its contractual obligations pursuant to this paragraph notwithstanding the issuance of a termination for cause or convenience by the State.

19.1.5 State Responsibilities for Transition: The State shall assume responsibility for Transition program management. A Program manager responsible for coordinating Transition

activities, maintaining the transition task schedule, and approving transition deliverables shall be appointed.

19.1.6 Transition of Services: Upon Termination of this Agreement, the Contractor shall promptly forward all non-valid Appeals, and Appeals received after the termination date to the successor contractor, or a third party designated by the Department, to conduct the Medical Documentation Review. The Contractor shall conduct Medical Documentation Reviews as described in this Agreement for all Valid Appeals received on or prior to January 31, 2022, or the termination of the Agreement, if earlier.

19.1.7 Compensation for Transition Services: Contractor shall be reimbursed for transition services performed during the transition period at the rates set forth in this Agreement.

ARTICLE XX: CONFIDENTIALITY

In addition to the Confidentiality terms specified in Appendices A and B to this Agreement, the following provisions also shall apply:

20.1.0 All records relating to the Agreement are confidential and shall be used by the Contractor solely for the purpose of carrying out its obligations under the Agreement, for measuring the performance of the Contractor in accordance with the performance guarantees set forth in Article VII of this Agreement, and for providing the Department with material and information as may be specified elsewhere in this Agreement.

20.2.0 Except as directed by a court of competent jurisdiction, or as necessary to comply with applicable New York State or federal law, or with the written consent of the Employee, no records may be otherwise used or released to any party other than the Department by the Contractor, its officers, employees, agents, consultants Key Subcontractors, or Affiliates either during the term of the Agreement or in perpetuity thereafter. Deliberate or repeated accidental breach of this provision may, at the sole discretion of the Department, be grounds for termination of the Agreement.

20.3.0 The Contractor, its officers, employees, agents, consultants and/or any Key Subcontractors or Affiliates agree to comply, during the performance of the Agreement, with all applicable Federal and State privacy, security and confidentiality statutes, including but not limited to the Personal Privacy Law (New York Public Officer's Law Article 6-A, as amended), and its implementing regulations, policies and requirements, for all material and information obtained

by the Contractor through its performance under the Agreement, with particular emphasis on such information relating to Employees.

20.4.0 The Contractor shall be responsible for assuring that any Agreement between the Contractor and any of its officers, employees, agents, consultants and/or Key Subcontractors or Affiliates contains a provision which strictly conforms to the various confidentiality provisions of this Agreement.

20.5.0 The Contractor shall promptly advise the Department of all requests made to the Contractor for information regarding the performance of Services under this Agreement including, but not limited to, requests for any material and information provided by the Department, except as required by Key Subcontractors or Affiliates solely for the purpose of fulfilling the Contractor's obligations under this Agreement or as required by law.

ARTICLE XXI: IRAN DIVESTMENT ACT

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

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

21.3.0 During the term of the Agreement, should the Department receive information that a person (as defined in State Finance Law 165-a) is in violation of the above-referenced certification, the Department will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in

violation of the Act within 90 Days after the determination of such violation, then the Department shall take such action as may be appropriate and provided for by law, rule or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

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

ARTICLE XXII: VENDOR RESPONSIBILITY

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

22.2.0 The Contractor shall at all times during the Agreement term remain responsible. The Contractor agrees, if requested by the Commissioner or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

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

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

Contractor: National Medical Reviews, Inc.

Contract Number: C000690

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

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

Date: 11/28/16

By: DEIRDRE A. TAYLOR

Name: _____

Title: DEPUTY COMMISSIONER FOR ADMINISTRATION

National Medical Reviews, Inc.

Date: 11-7-16

By: _____

Name: Dr. Alan D. Horwitz

Title: President/CEO

STATE OF PA)

) ss:

COUNTY OF BUCKS)

Commonwealth of Pennsylvania

On the 17th day of November, 2016, before me personally came

Dr. Alan D. Horwitz, to me known, and known to me to be the person who executed the above instrument, who, being duly sworn by me, did for himself depose and say that he is the President/CEO of National Medical Reviews, Inc. the corporation or organization described in and he had authority to execute the above instrument; and that he signed his name thereto.

NOTARY PUBLIC

My commission expires: 01-08-2019

Approved as to form:

ATTOYNEY GENERAL APPROVED AS TO FORM
NYS ATTORNEY GENERAL

By: _____

Date: DEC 02 2016

Approved:

STATE COMPTROLLER APPROVED
DEPT. OF AUDIT & CONTROL

By: _____

Date: JAN 06 2017

FOR THE STATE COMPTROLLER

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

TABLE OF CONTENTS

	Page
1. Executory Clause	3
2. Non-Assignment Clause	3
3. Comptroller's Approval	3
4. Workers' Compensation Benefits	3
5. Non-Discrimination Requirements	3
6. Wage and Hours Provisions	3
7. Non-Collusive Bidding Certification	4
8. International Boycott Prohibition	4
9. Set-Off Rights	4
10. Records	4
11. Identifying Information and Privacy Notification	4
12. Equal Employment Opportunities For Minorities and Women	4-5
13. Conflicting Terms	5
14. Governing Law	5
15. Late Payment	5
16. No Arbitration	5
17. Service of Process	5
18. Prohibition on Purchase of Tropical Hardwoods	5-6
19. MacBride Fair Employment Principles	6
20. Omnibus Procurement Act of 1992	6
21. Reciprocity and Sanctions Provisions	6
22. Compliance with New York State Information Security Breach and Notification Act	6
23. Compliance with Consultant Disclosure Law	6
24. Procurement Lobbying	7
25. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors	7
26. Iran Divestment Act	7

STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.

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

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

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

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

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

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

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

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

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS.

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX B
STANDARD CLAUSES FOR ALL DEPARTMENT CONTRACTS

TABLE OF CONTENTS

1.	INTEGRATION	2
2.	EXECUTORY PROVISION.....	2
3.	CHOICE OF LAW	2
4.	DISPUTE RESOLUTION	2
5.	WAIVER OF BREACH.....	2
6.	NEW YORK STATE REQUIREMENTS.....	2
7.	OUTSIDE OF SCOPE	3
8.	NON-ASSIGNABILITY	3
9.	NOTIFICATION.....	3
10.	INDEMNIFICATION	3
11.	PATENT, COPYRIGHT OR PROPRIETARY RIGHTS INFRINGEMENT	4
12.	DATE/TIME WARRANTY	4
13.	VIRUS WARRANTY	5
14.	TITLE AND OWNERSHIP WARRANTY	5
15.	USE RESTRICTIONS AND INTELLECTUAL PROPERTY	5
16.	OWNERSHIP/TITLE TO PRODUCT DELIVERABLES	5
17.	FORCE MAJEURE.....	7
18.	TIME OF THE ESSENCE	7
19.	RIGHTS AND REMEDIES	7
20.	FEDERAL AND STATE COMPLIANCE	7
21.	TAXES	8
22.	INDEPENDENT CONTRACTOR	8
23.	NO THIRD PARTY BENEFICIARIES.....	8
24.	HEADINGS OR CAPTIONS	8
25.	PARTIAL INVALIDITY.....	8
26.	CONFLICT OF INTEREST	8
27.	AUDIT AUTHORITY.....	9
28.	CONFIDENTIALITY	9
29.	INFORMATION SECURITY REQUIREMENTS.....	9
30.	NONDISCLOSURE OF CONFIDENTIAL INFORMATION	10
31.	FREEDOM OF INFORMATION LAW	11
32.	TERMINATION OF AGREEMENT.....	11
33.	CONTRACTOR PERSONNEL	12
34.	OPERATIONAL CONTACTS	12
35.	SUBCONTRACTING	13
36.	PUBLICITY AND COMMUNICATIONS.....	14
37.	CONSULTANT DISCLOSURE REQUIREMENTS	14
38.	PROCUREMENT LOBBYING RESTRICTIONS UNDER STATE FINANCE LAW SECTIONS 139-J AND 139-K.....	14
39.	VENDOR RESPONSIBILITY	14
40.	TAX LAW SECTION 5-A - CERTIFICATION REGARDING SALES AND COMPENSATING USE TAXES	15
41.	CONTRACT PAYMENT.....	15

1. INTEGRATION

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

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

2. EXECUTORY PROVISION

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

3. CHOICE OF LAW

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

4. DISPUTE RESOLUTION

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

5. WAIVER OF BREACH

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

6. NEW YORK STATE REQUIREMENTS

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

7. OUTSIDE OF SCOPE

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

8. NON-ASSIGNABILITY

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

9. NOTIFICATION

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

10. INDEMNIFICATION

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

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

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

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

11. PATENT, COPYRIGHT OR PROPRIETARY RIGHTS INFRINGEMENT

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

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

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

12. DATE/TIME WARRANTY

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

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

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

13. VIRUS WARRANTY

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

14. TITLE AND OWNERSHIP WARRANTY

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

15. USE RESTRICTIONS AND INTELLECTUAL PROPERTY

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

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

16. OWNERSHIP/TITLE TO PRODUCT DELIVERABLES

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

(A) Definitions

1. Product(s):

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

2. Existing Product(s):

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

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

(B) Title to Project Deliverables

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

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

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

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

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

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

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

3. Documentation, Data & Reports

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

17. FORCE MAJEURE

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

18. TIME OF THE ESSENCE

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

19. RIGHTS AND REMEDIES

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

20. FEDERAL AND STATE COMPLIANCE

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

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

21. TAXES

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

22. INDEPENDENT CONTRACTOR

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

23. NO THIRD PARTY BENEFICIARIES

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

24. HEADINGS OR CAPTIONS

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

25. PARTIAL INVALIDITY

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

26. CONFLICT OF INTEREST

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

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

27. AUDIT AUTHORITY

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

The Contractor shall make available documentary evidence necessary to perform such reviews. Documentation made available by the Contractor may include, but is not limited to, source documents, books of account, subsidiary records and supporting work papers, claim documentation and pertinent contracts and correspondence.

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

28. CONFIDENTIALITY

All records maintained by the Contractor and relating to the Agreement are confidential and shall be used by the Contractor and its officers, employees, and subcontractors or agents solely for the purpose of carrying out its obligations under the Agreement. Except as directed by a court of competent jurisdiction or as may be permitted or required by applicable New York State or federal law or regulations, no such records may be otherwise used or released to any person by the Contractor, its employees, subcontractors or agents, either during the term of the Agreement or in perpetuity thereafter. Deliberate or repeated accidental breach of this provision may, at the sole discretion of the Department, be grounds for termination of the Agreement.

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

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

29. INFORMATION SECURITY REQUIREMENTS

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

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

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

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

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

30. NONDISCLOSURE OF CONFIDENTIAL INFORMATION

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

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

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

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

This representation shall survive termination of the Agreement.

31. FREEDOM OF INFORMATION LAW

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

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

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

32. TERMINATION OF AGREEMENT

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

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

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

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

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

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

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

33. CONTRACTOR PERSONNEL

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

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

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

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

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

34. OPERATIONAL CONTACTS

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

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

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

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

35. SUBCONTRACTING

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

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

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

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

36. PUBLICITY AND COMMUNICATIONS

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

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

37. CONSULTANT DISCLOSURE REQUIREMENTS

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

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

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

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

39. VENDOR RESPONSIBILITY

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

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

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

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

41. CONTRACT PAYMENT

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

May 2011



THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT

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

National Medical Reviews, Inc.

with principal offices at

260 Knowles Ave., Suite 330| Southampton, PA 18966

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

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

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

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

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

Third Party Name: National Medical Reviews, In.	NYS Department of Civil Service (DCS)
Authorized Signature 	Authorized Signature
Name (Print) Dr. Alan D. Horwitz	Name (Print) DEBORAH TAYLOR
Date 11/22/2016	Date 11.29.14



THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT

ATTACHMENT 1 – SECURITY REQUIREMENTS

1. *Right to Use Connection*

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

2. *Data Exchange*

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

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

3. *Network Security*

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

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

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

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

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



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

4. *Notifications*

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

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



5. *Citizen Notifications*

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

6. *Payment of Costs*

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

7. *Confidentiality*

7.1 Information exchanged for the business purposes outlined in Attachment 2 will be held confidential by the Parties to the maximum extent permitted by law. Each Party may internally use the information received from the other Party hereunder in connection with and as specifically necessary to accomplish the Business Purpose set forth in Attachment 2 and for no other purposes. Each Party may otherwise share such information with other third parties (e.g. consultants, subcontractors, control agencies) as required or permitted by law in order to effect the business purposes outlined in Attachment 2 and for no other purposes, provided that such third parties agree to the confidentiality restrictions set forth herein and as may be required otherwise by State and federal law.

7.2 Third Party must implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the sensitive information that it creates, receives, maintains, or transmits on behalf of DCS.

7.3 Unencrypted DCS information must not be transmitted over email.

7.4 Third Party must ensure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect it and report to the ITS Enterprise Service Desk any security incident of which it becomes aware.



8. *Third Party Users*

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

9. *DCS-owned Equipment*

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

10. *Term, Termination and Survival*

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



11. Severability

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

12. Waiver

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

13. Assignment

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

14. Force Majeure

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

15. Partial Invalidity

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



THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT

ATTACHMENT 2 – REQUEST REQUIREMENTS

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

Part 1 – Business Justification

A. DCS Sponsor (*Division Director*)

Name:

David Boland

Division:

Employee Benefits Division

Office Location:

NYS Department of Civil Service
Albany, New York 12239

Phone Number:

518-473-1977

Email Address:

David.Boland@cs.ny.gov

Back-up Point of Contact: (Data Custodian)

Name:

Barbara Vaughn

Division:

Employee Benefits Division

Office Location:

NYS Department of Civil Service
Albany, New York 12239

Phone Number:

518-549-2328

Email Address:

Barbara.Vaughn@cs.state.ny.us

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

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

N/A



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

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

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

Access Controls:

N/A

Audit Controls:

N/A

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

N/A

Method of Disposal of media and paper:

N/A

User Account Management, including review of accounts:

N/A

Physical Security:

N/A

Other:

N/A

E. Estimated number of hours of use each week?

1 – 20

21 – 40

More than 40 hours per week

F. Anticipated normal hours of use?

M – F, 8:00 – 5:00 pm Eastern time

Other (specify):

N/A

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

N/A

H. Approximately how long will the connection be needed?

Up to 6 months

6 – 12 months

More than 12 months



Specific time period:

N/A

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

I. Other useful information

N/A

J. Third Party Information

Name of Third Party:

N/A

Main Phone Number:

N/A

Main Office Address:

N/A

Management Contact

Name:

N/A

Department:

N/A

Address:

N/A

Email Address:

N/A

Phone Number:

N/A

Manager's Name:

N/A

Manager's Phone:

N/A

Backup Contact

Name:

N/A

Department:

N/A

Address:

N/A

Email Address:

N/A

Phone Number:

N/A

Manager's Name:

N/A

Manager's Phone:

N/A

Technical Contact

Name:

N/A

Department:

N/A

Address:

N/A

Email Address:

N/A

Phone Number:

N/A

Manager's Name:

N/A

Manager's Phone:

N/A

Technical Support Hours:

N/A

Escalation List:

N/A



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

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

ADM-125 (4/06)

Domain name(s):

N/A

Host name(s):

N/A



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

User 1 (name, phone, email):

N/A

User 2 (name, phone, email):

N/A

User 3 (name, phone, email):N/A

User 4 (name, phone, email):

N/A

User 5 (name, phone, email):

N/A

User 6 (name, phone, email):

N/A

User 7 (name, phone, email):

N/A

User 8 (name, phone, email):

N/A

User 9 (name, phone, email):

N/A

User 10 (name, phone, email):

N/A

K. Other information

N/A



THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT

ATTACHMENT 3 – THIRD PARTY ACCEPTABLE USE POLICY AND AGREEMENT

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

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

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

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

The undersigned acknowledges that he or she has read, understands, and agrees to comply with this Third Party Acceptable Use Policy and Agreement governing the use of DCS computing resources.

User Signature:	Date:
N/A	N/A

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

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



THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT

ATTACHMENT 3 – THIRD PARTY ACCEPTABLE USE POLICY AND AGREEMENT

I. *Protection of DCS Information*

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

II. *DCS Log-on Banner*

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

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

III. *Passwords*

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



IV. *Shared Accounts*

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

V. *Virus Protection*

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

VI. *Acceptable Use*

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

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

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

VII. *Software Protection*

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

VIII. *Reporting Incidents*

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



IX. *DCS Rights*

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

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

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

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

X. *Penalties*

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



Name And Address Of Borrower N/A	DCS Business Unit (Loaning Organization) N/A	
	Point Of Contact N/A	
	Work Location N/A	Telephone N/A
Shipping Address (If different from borrower's) N/A	Manager's Name N/A	
	Date To Be Loaned N/A	
	Date To Be Returned N/A	
Equipment To Be Loaned		
Quantity	Description	Value
N/A	N/A	N/A
N/A	N/A	N/A
N/A	N/A	N/A
N/A	N/A	N/A
N/A	N/A	N/A
Purpose Of Loan N/A		
CONDITIONS OF LOAN		
<ol style="list-style-type: none"> 1. The Borrower of the above equipment agrees to return same in like condition as received from DCS, normal wear and tear excepted, on or before the above return date, unless the loan period is formally extended. 2. Upon termination of this Agreement, Borrower shall uninstall all DCS software included in this Agreement from Borrower's computer and/or network equipment. 3. The Borrower shall not make any copies of DCS software included in this Agreement. 4. In case of loss or damage beyond repair, DCS shall be reimbursed by Borrower at the current price of replacement. 5. The equipment shall not be loaned or transferred to a third party without the written consent of DCS. 6. The right is reserved to cancel the loan or recall the equipment upon ____ days' notice. 7. The Borrower shall assume all shipping and/or transportation costs involved. 8. Other conditions: 		



Agreed (Borrower)	Approved (DCS)
Borrowing Organization N/A	Loaning Organization N/A
Signature Of Authorized Official N/A	Signature Of Authorized Official N/A
Title N/A	Title N/A
Date N/A	Date N/A
RECEIPT OF EQUIPMENT	
Borrower (Upon initial receipt)	DCS Lender (Upon termination of Agreement)
Borrowing Organization N/A	Loaning Organization N/A
Signature Of Authorized Official N/A	Signature Of Authorized Official N/A
Title N/A	Title N/A
Date N/A	Date N/A

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

CONTRACTOR REQUIREMENTS AND OBLIGATIONS UNDER NEW YORK STATE EXECUTIVE LAW, ARTICLE 15-A (PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS)

I. General Provisions

- A. The Department is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (“MWBE Regulations”) 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. Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State Department (the “Department”), to fully comply and cooperate with the Department in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for certified minority and women-owned business enterprises (“MWBEs”). 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”) or other applicable federal, state or 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 withholding of funds or such other actions, liquidated damages pursuant to section VII of this Appendix or enforcement proceedings as allowed by the Contract.

II. Contract Goals

- A. For purposes of the Contract, the Department established an overall goal of 0% for Minority and Women-Owned Business Enterprises (“MWBE”) participation as subcontractors and suppliers, as it relates only to the overall cost of the Contract.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in section II-A above, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address:

<http://www.nylovesmwbe.ny.gov/cf/search.cfm>

Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on this Contract.

- C. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the Department for liquidated or other appropriate damages, as set forth herein.

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

III. Equal Employment Opportunity (EEO)

- A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Contractor shall comply with the following provisions of Article 15-A:
1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 2. The Contractor shall submit an EEO policy statement to the Department within seventy two (72) hours after the date of the notice by Department of proposed award of the Contract to the Contractor.
 3. If Contractor or subcontractor does not have an existing EEO policy statement, the Department may provide the Contractor or subcontractor a model statement (see Form EEO-102 entitled "Minority and Women-Owned Business Enterprises M/WBE - Equal Employment Opportunity (EEO) 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 sections (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 – EEO Staffing Plan

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

To ensure compliance with this section III, the Contractor shall submit an EEO 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 EEO Staffing Plan form and submit it as part of its Proposal or within a reasonable time, but no later than the time of proposed award of the Contract.

- D. Form EEO-101 - Workforce Utilization/Compliance Report (“Workforce Report”)
1. Once proposed contract award has been made and during the term of Contract, Contractor is responsible for updating and providing notice to the Department of any changes to the previously submitted EEO Staffing Plan. This information is to be submitted on a quarterly basis during the term of the Contract to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
 2. Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.
 3. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the Contract.
- E. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. 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.

IV. MWBE Utilization Plan Form (MWBE-100) and Certification of Good Faith Efforts (Form MWBE-104)

- A. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan (form MWBE-100) either prior to, or at the time of, the execution of the Contract for Department consideration and acceptance. The Contractor shall ensure that enterprises have been identified within the MWBE Utilization Plan, and the Contractor shall attempt, in good faith, to utilize such enterprise(s) at least to the extent indicated in the Contractor’s MWBE Utilization Plan as accepted by the Department. The Contractor must document "good faith efforts" to provide meaningful participation by New York State Certified MWBE subcontractors or suppliers in the performance of the Contract. In support of such efforts, the Contractor will include with its MWBE Utilization Plan submission a Certification of Good Faith Efforts statement (Form MWBE-104).

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

- B. Contractor agrees to use such MWBE Utilization Plan, as accepted by the Department, for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in section III-A of this Appendix D.
- C. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, Department shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

V. Waiver Requests (MWBE-101)

- A. For Waiver Requests Contractor should use Form MWBE-101 – Request for Waiver Form.
- B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver Form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the Waiver Request is complete, the Department shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If the Department, upon review of the MWBE Utilization Plan and updated Quarterly M/WBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the 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 M/WBE Contractor Compliance Report (Form MWBE-103)

Contractor is required to submit a Quarterly M/WBE Contractor Compliance Report (Form MWBE-103) to the Department by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

VII. Liquidated Damages - MWBE Participation

- A. Where Department determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the Department liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the Department, Contractor shall pay such liquidated damages to the Department within sixty (60) days after they are assessed by the Department unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development

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

pursuant to subdivision 8 of section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the Department.

VII. Further Information:

General questions concerning New York's MWBE program should be directed to:

New York State Department of Economic Development
633 Third Avenue
New York, NY 10017
Telephone: (212) 803-2414

New York State Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl Street
Albany, NY 12245
Telephone: (518) 292-5150

All of the EEO and M/WBE forms referenced herein this Appendix D are available for download at the Department's website at: <http://www.cs.ny.gov/pio/mwbe-eeo-forms.cfm>). These forms are to be submitted without change to the goals specified by Department in the Contract.

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

M/WBE AND EEO POLICY STATEMENT

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

Agreed to this _____ day of _____, 2015

By _____

Print: _____ Title: _____

_____ is designated as the Minority Business Enterprise Liaison
(Name of Designated Liaison)
responsible for administering the Minority and Women-Owned Business Enterprises- Equal
Employment Opportunity (M/WBE-EEO) program.

M/WBE Contract Goals

- % Minority and Women’s Business Enterprise Participation
- % Minority Business Enterprise Participation
- % Women’s Business Enterprise Participation

EEO Contract Goals

- % Minority Labor Force Participation
- % Female Labor Force Participation

(Authorized Representative)

Title: _____

Date: _____



Your MWBE Utilization and Reporting Responsibilities Under Article 15-A

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


GETTING STARTED

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

VENDOR RESPONSIBILITIES

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

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

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

For more information, contact your project manager.

Exhibit A

Exhibit I.D – MacBride and Non-Collusive Bidding Certification

**NON-DISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND
MACBRIDE FAIR EMPLOYMENT PRINCIPLES**

In accordance with Chapter 807 of the Laws of 1992 the Offeror, by submission of this bid, certifies that it or any individual or legal entity in which the Offeror holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership interest in the Offeror, either (answer "yes" or "no" to one or both of the following, as applicable):

Have business operations in Northern Ireland. Yes _____ or No X _____

If yes:

Shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of their compliance with such Principles. Yes _____ or No _____

NON-COLLUSIVE BIDDING CERTIFICATION

By submission of this bid, each Offeror and each person signing on behalf of any Offeror certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

1. The prices in this bid have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other Offeror or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Offeror and will not knowingly be disclosed by the Offeror prior to opening, directly or indirectly, to any other Offeror or to any competitor; and
3. No attempt has been made or will be made by the Offeror to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

Date: 8/8/2016


Signature

PRINT:

SIGNATORY'S NAME Meredith Merlini TITLE Vice President

INDIVIDUAL, CORPORATE OR PARTNERSHIP ACKNOWLEDGMENT

STATE OF PENNSYLVANIA

}
: SS.:
}

COUNTY OF BUCKS

On the 8TH day of August in the year 2016, before me personally appeared:

Meredith Merlini, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he resides at 730 Moredon Road, Town of Meadowbrook, County of Montgomery, State of Pennsylvania; and further that, if applicable:

[Check One, if Applicable]

If a corporation): he is the **Vice President** of

National Medical Reviews, Inc., 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.

If a partnership): he is the _____ of

_____, the partnership described in said instrument; that, by the terms of said partnership, he is authorized to execute the foregoing instrument on behalf of the partnership for the purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name and on behalf of said partnership as the act and deed of said partnership.


Notary Public

2017-2021 NYS DRP Contract

Placeholder for Exhibit B

Exhibit B: 2016 Request for Proposals entitled, "Dispute Resolution Program" dated June 15, 2016; and Amendments dated June 21, 2016.

**New York State Department of Civil Service
Request for Proposals #DRP-2016-1
New York State Dispute Resolution Program
Official Answers to Offerors Questions**

Following are the Department's answers to questions regarding the New York State Dispute Resolution Program RFP.

Note: If the Offeror's questions included their name, the name has been replaced with "Offeror."

Questions and Answers as of, July 5th, 2016

<u>Section</u>	<u>Question and Answer</u>
Q1 Section I Page 1-6, 7	<i>"The selected Offeror must notify ... of the receipt of a Valid Appeal and identify the date and time of receipt."</i> How is this to be done (i.e., email) and to whom?
A1	As noted in the referenced section, "The selected Offeror must notify the Employing Agency, the Treating Physician, the Evaluating Physician, the Employee, the appropriate Union and the Fund, if applicable of the receipt of a Valid Appeal and identify the date and time of receipt" This should be communicated in a letter to the employee with cc's to the other entities that must be notified.
Q2 Section I Page 1-7	Do holidays count in the seven calendar day turn-around time in completing a Medical Documentation Review?
A2	Yes
Q3 Section I Page 1-7	<i>"This report may be sent via facsimile but must also be mailed..."</i> How is mailing accomplishment (i.e., certified mail, return receipt requested, regular mail, overnight)?
A3	The Offeror can determine how the written report is to be mailed as long as it is within the seven (7) calendar day Program Review Period.
Q4 Section II Page 2-20	Must the Offeror candidate be an entity organized within the State of New York (domestic entity)?
A4	No.
Q5 Section II Page 2-20	Please confirm that an out-of-state corporation does not need to file for foreign authority within the state of New York unless and until such company is selected?

A5 **The Offeror should be registered to do business in NYS. Please see the Department of State website <http://www.dos.ny.gov/> for instructions.**

As noted in Section III.B.1 of the RFP, Offeror's , as of the Proposal Due Date, must possess the legal capacity to enter into a Contract with the Department.

The introduction in Section VII Contract Provisions and Article 5.1.0 state the Contractor must have the authority to do business in the State of New York.

Q6 General Question Will there be a weekend contact person or an after-hours person whom the selected offeror will be able to contact? And how?

A6 **No**

Q7 General Question Does the State require that vendors/subcontractors/peer reviewers be within the State of New York or may they be within other states that are not in violation of the Omnibus Procurement Act?

A7 **The Dispute Resolution Program RFP does not require that vendors/subcontractors/peer reviewers be located within New York State.**

Section II.B.2 provides information regarding the Omnibus Procurement Act that Offerors must comply with.

2017-2021 NYS DRP Contract

Placeholder for Exhibit C and C-1

Exhibit C: Contractor's Proposal; and **Exhibit C-1:** Written responses to Clarifying Questions regarding Contractor's Proposal. There was no management interview held.

NYS DCS DRP Exhibit IV
DRP Cost Exhibit - Valid Appeal Fee

	Year 1	Year 2	Year 3	Year 4	Year 5	Five Year Fee Total	Average Valid Appeals Per Year	Total for Contract Year
	(A)	(B)	(C)	(D)	(E)	(A+B+C+D+E) = (F)	(G)	(F*G) = (H)
Valid Appeal Fee	████████	████████	████████	████████	████████	████████	██████	████████

Instructions:

1. Offerors should complete the chart above by proposing a fee to be paid for each **Valid Appeal** reviewed. All costs associated with the implementation of the DRP Program Review process should be incorporated in the development of the cost per **Valid Appeal**.
2. For purposes of developing the Cost Proposal, the Offeror should assume that the number of reviews to be completed shall be consistent with the historical numbers presented in Exhibit III.A of this RFP. The Department cannot and shall not guarantee the number of Appeals under the Agreement resulting from this RFP.