



# Department of Civil Service

## Request For Proposal #DRP-2016-1

### “Dispute Resolution Program”

**RELEASE DATE: June 15, 2016**

**PROPOSAL DUE DATE: August 11, 2016**

**IMPORTANT NOTICE:** A Restricted Period under the Procurement Lobbying Law is currently in effect for this Procurement and it will remain in effect until State Comptroller approval of the resultant Contract. During the Restricted Period for this Procurement ALL communications must be directed, in writing, solely to the Department’ Procurement manager as listed below and shall be in compliance with the Procurement Lobbying Law and the NYS Department of Civil Service “*Rules Governing Conduct of Competitive Procurement Process*” (refer to Section II: Procurement Protocol and Process).

#### Department of Civil Service Contact for Inquiries and Submissions for this Solicitation:

DRP Procurement Manager  
Employee Benefits Division, Room 1106  
New York State Department of Civil Service  
Albany, New York 12239  
(518) 402-0364  
e-mail: [DRP2016RFP@cs.ny.gov](mailto:DRP2016RFP@cs.ny.gov)

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**Lola Brabham**  
Executive Deputy Commissioner  
NYS Department of Civil Service

**David Boland**  
Director  
Employee Benefits Division  
NYS Department of Civil Service

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**SECTION I: INTRODUCTION****A. Purpose**

The purpose of this Request for Proposals (RFP or Procurement), entitled “Dispute Resolution Program” (Program or DRP) is to secure the services of a qualified organization (Offeror) to review conflicting medical opinions (Appeals) regarding an Employee’s degree of disability. It is the Department of Civil Service’s (Department) intent to enter into a Contract (Agreement) with the Offeror selected as a result of this RFP for the period February 1, 2017 through January 31, 2022 under which the selected Offeror shall be responsible for administering the Program in accordance with the specifications in this RFP. This Agreement is subject to approval by the NYS Office of the Attorney General and the NYS Office of the State Comptroller. The Offeror must agree to be bound by its Proposal which will be explicitly incorporated by reference into the executed Agreement. The Department will only contract with a single Offeror, which will be the sole contact with regard to all provisions of the Agreement. If the Offeror’s Proposal includes Key Subcontractors or Affiliates, the Offeror will be considered the Prime Contractor, and the Offeror shall assume full responsibility for the fulfillment of all of the responsibilities under the Agreement. The Department reserves the right to approve (or disapprove) any or all Key Subcontractors. This RFP and other relevant information may be reviewed at: <http://www.cs.ny.gov/DRP2016RFP/index.cfm>.

**Note:** Refer to Section VIII: Glossary of Terms, for definitions of terms used throughout this RFP.

**B. Overview of the New York State Workers’ Compensation Benefit**

All employers in the State are required to provide workers’ compensation coverage for their employees pursuant to the New York State Workers’ Compensation Law (WCL). The WCL provides employees with coverage for medical benefits, with no out-of-pocket expense, as a result of occupational injury or illness. In addition to medical benefits, employees receive indemnity benefits or payment for lost wages when out of work due to a work-related illness or injury.

The Workers’ Compensation benefit for State employees involves the interaction and oversight of several State agencies including the Workers’ Compensation Board

(Board) which determines the occupational nature and compensability of employee injuries/illnesses; the New York State Insurance Fund (Fund) which handles the claims administrative functions for the State of New York as the employer; the Governor's Office of Employee Relations (GOER) which negotiates terms and conditions of employment with the ten (10) labor unions representing State employees; and the Department of Civil Service (DCS) which manages the contract referred to as the Insuring Agreement under Workers' Compensation Law, Section 88-C and reimburses the Fund for Workers' Compensation Claims.

New York State, as an employer, can extend negotiated enhancements to the mandatory statutory benefits to State employees under certain conditions. The DRP is one of the several collectively bargained enhancements.

### **C. Collectively Bargained Workers' Compensation Benefit Enhancements**

There are two Employee groups currently eligible for the Dispute Resolution Program. Group 1 Employees belong to the Security Services Unit, Security Supervisors Unit, Agency Police Services Unit, and Professional Services Negotiating Unit. Group 2 Employees belong to the State Police Troopers Unit, State Police Investigation Unit, State Police Commissioned/Non-Commissioned Officers Unit, and the State Police Management/Confidential Group. The composition of each group is also described in **Exhibit II.A**, Description of Groups Covered by the DRP, of this RFP. Collectively bargained workers' compensation benefits for each group, as they relate to the Program, are described below:

#### **1. Medical Evaluation Program (MEP) – Group 1 and Group 2**

The MEP is a voluntary program that provides Group 1 and Group 2 Employees who are injured **on-the-job** with an expedited, independent physical examination to determine their degree of disability and prognosis for full recovery. The Evaluating Physician review is arranged by the Fund. If the Evaluating Physician determines that the degree of disability is greater than fifty percent (50%), the Employee continues to receive workers' compensation leave benefits at full pay. If the Evaluating Physician determines that the degree of disability is fifty percent (50%) or less, the Evaluating Physician also assesses the Employee's estimated physical capabilities and expected return to work.

The Fund reports the results of the Evaluating Physician's examination to the Treating Physician and the Employing Agency. The Employing Agency uses the Evaluating Physician's Report (Form IME-4) and Estimated Physical Capabilities Form to assess the appropriateness of a Light Duty Assignment. A sample Form IME-4 is included as **Exhibit II.B**, Form IME-4 Independent Examiners Report of Independent Medical Examination, of this RFP. A sample Estimated Physical Capabilities Form is included as **Exhibit II.C.1**, Physical Capabilities Form, of this RFP. A sample Estimated Physical Capabilities Form for New York State Police is included as **Exhibit II.C.2**, Physical Capabilities Form – State Police, of this RFP.

An Employee, who has been directed by the Employing Agency to report to a Light Duty Assignment as a result of the Evaluating Physician's report, may appeal through the Dispute Resolution Program described in Section I.D. of this RFP. Further details on the MEP are contained in **Exhibit II.D**, New York State Attendance and Leave Manual Policy Bulletin 93-02 of this RFP, and **Exhibit II.E**, Workers' Compensation Memorandum of Understanding of this RFP.

## **2. Modified Duty Policy (MDP)- Group 2 only**

The MDP outlines the policy for providing Group 2 Employees with a Modified Duty Assignment as a result of an on-duty or off-duty injury or illness. An Employee recovering from an **off-duty injury or illness** may request a Modified Duty Assignment by submitting documentation to the staff Physician indicating that the Treating Physician has determined that the Employee's degree of disability is fifty percent (50%) or less. The Treating Physician must also complete an Estimated Physical Capabilities Form. An Employee recovering from an **on-duty injury or illness** may be required to work in a Modified Duty Assignment if the Evaluating Physician determines that the Employee is fifty percent (50%) or less disabled. The Evaluating Physician review is arranged by the Fund and includes completion of an Estimated Physical Capabilities Form. The Fund reports the results of the Evaluating Physician's examination to the Treating Physician and the Staff Physician.



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The Staff Physician uses the Treating Physician's Report and, if applicable, the Evaluating Physician's Report (Form IME-4) and Estimated Physical Capabilities Form to assess the appropriateness of a Modified Duty Assignment. For both on and off-duty injuries and illnesses, the Staff Physician makes the final medical determination and the State Police Superintendent has the sole authority to make a Modified Duty Assignment.

An Employee who has been assigned or denied a Modified Duty Assignment as a result of a conflict between the degree of disability as determined by the Treating Physician and the Staff or Evaluating Physician may appeal through the Dispute Resolution Program. Further details on the MDP are contained in **Exhibit II.F**, State Police Executive Memorandums 09-15 and 09-17 and the corresponding **Exhibit II.G.1**, Memorandum of Agreement with the Police Benevolent Association and **Exhibit II.G.2**, Memorandum of Agreement with the New York State Police Investigators Association, of this RFP.

#### **D. Dispute Resolution Program Overview**

The Dispute Resolution Program (DRP) is a process agreed to by New York State (NYS) and several unions representing certain state Employees to obtain an independent third party review of the Treating Physicians' and Evaluating Physicians' conflicting medical determinations regarding an injured Employee's degree of disability. The DRP is currently administered by National Medical Reviews (NMR). DRP utilization for Calendar Years 2012 through 2015 is summarized in **Exhibit III.A**, DRP Utilization 2012-2015, of this RFP.

Eligibility for, and the rules that govern the Program differ slightly for each group: However, the required Program services are identical with the exception of the Appeal Period. The collectively bargained DRP services are detailed in the materials included in **Exhibit II.G.1**, **Exhibit II.G.2** and **Exhibit II.H**, Worker's Compensation Dispute Resolution Program Memorandum of Understanding, of this RFP. Group 1 is eligible only for work-related Medical Documentation Reviews, while Group 2 is eligible for both work-related and non-work-related (i.e., ordinary disability) Medical Documentation Reviews. Group 1 may use the Program once during the administration of a work-related injury or illness; Group 2 may use the Program multiple times for the same injury/illness when they are: assigned to; terminated

from; receive a modification of; or receive an extension of a Modified Duty Assignment.

Requests for Medical Documentation Review **must** be initiated on behalf of the Employee by the Employee's Treating Physician using an Appeal Request Form. See **Exhibit III.C**, Sample Appeal Request Form of this RFP. It is the Treating Physician's responsibility to submit, along with the Appeal Request Form, any and all medical documentation necessary to substantiate the Employee's degree of disability, treatment plan, prognosis, and estimated physical capability limitations. The Employee is responsible for providing the Appeal Request Form to the Treating Physician, informing the Treating Physician of the Appeal process, and requesting the Treating Physician to submit the Appeal to the selected Offeror.

For an Appeal to be considered timely, the Treating Physician is requested to submit the Appeal Request Form, Form C-4: Doctor's Initial Report (for work-related injuries/illnesses), and other medical documentation to the selected Offeror within the allowed Appeal Period [three (3) Business Days from the day the Employing Agency notifies the Group 1 Employee of the Light Duty Assignment and ten (10) calendar Days from the day the Employing Agency notifies the Group 2 Employee of the Modified Duty Assignment determination]. In order to meet the filing deadline, the Treating Physician may send the Appeal Request Form, Form C-4: Doctor's Initial Report, and other medical documentation to the selected Offeror via facsimile or overnight mail. A sample Form C-4: Doctor's Initial Report is provided in **Exhibit II.I.1** of this RFP. A sample Form C-4.2: Doctor's Progress Report is provided in **Exhibit II.I.2** of this RFP.

Upon receipt of the Appeal Request Form, the selected Offeror must immediately request supporting medical documentation from the Evaluating Physician. For work-related injuries/illness, supporting documentation must include the Form IME-4: Evaluating Physician's Report and Estimated Physical Capabilities Form. Once the selected Offeror receives complete medical documentation from both the Treating and Evaluating Physicians, the Appeal is considered a Valid Appeal and the Program Review Period will commence. 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. The selected Offeror must complete the Medical Documentation Review within the Program Review Period of seven (7) calendar Days.

The Program's Reviewing Physician (RP) shall evaluate medical records, the Treating and Evaluating Physician's reports and other necessary documentation, which may include laboratory reports and X-rays, to render a decision, as to whether the documentation better supports either the Treating or Evaluating Physician's degree of disability determination. The Department will provide the Offeror selected as a result of this RFP with copies of DCS job descriptions for NYSCOPBA Employees. The selected Offeror shall report, in writing, the RP's decision to uphold the Treating or Evaluating Physician's determination within the specified Program Review Period. This report may be sent via facsimile but must also be mailed to the Employee, Employing Agency, the Evaluating Physician, the Treating Physician, and the appropriate Union and the Fund, if applicable.

SECTION II: PROCUREMENT PROTOCOL AND PROCESS**A. Rules Governing Conduct of Competitive Procurement Process****1. Timeline/Key Events**

RFP Release Date	June 15, 2016
<b>Exhibit I.K</b> Offeror's Affirmation of Understanding & Agreement Due Date	See below*
Questions Due Date	June 29, 2016
<b>Amended June 21, 2016</b>	
<b>Release Date of Official Responses to Questions</b>	<b>July 11, 2016</b>
<b>Exhibit I.J</b> Notice of Bidding Intention Form Deadline	August 11, 2016
Proposals Due Date	August 11, 2016, 3:00 p.m. ET
Anticipated Contract Start Date	Upon OSC approval of the Agreement, "Dispute Resolution Program" on or about February 1, 2017.

\* Prior to the Offeror's initial contact with the Department, the Offeror must complete and submit **Exhibit I.K, "Procurement Lobbying Offeror's Affirmation of Understanding and Agreement"** to the Dispute Resolution Program Procurement Manager.

**2. Procurement Lobbying Limitations**

- a. Pursuant to State Finance Law sections 139-j and 139-k, this Procurement imposes certain procurement lobbying limitations. Offerors are restricted from making contacts during the Procurement's "Restricted Period" (from the issuance of this RFP until the date of the Agreement's final approval by the OSC) to other than designated staff of the Department and the Executive Branch of New York State government, unless the contact falls within certain statutory exceptions ("permissible contacts"). For purposes of this Section II.A.2 of this RFP, "Offeror" includes prospective Offerors prior to the due date for the submission of offers/bids (i.e. Proposals) in response to this RFP. Staff is required to obtain certain information from Offerors and others whenever there is a contact about the Procurement during the Restricted Period, and is required to make a determination of the Offeror's responsibility that addresses the Offeror's compliance with the statutes' requirements. Findings of non-responsibility result in rejection for contract award, and if an Offeror is subject to two non-responsibility findings within four years the Offeror also will be determined ineligible to submit a Proposal on, or be awarded a Contract for four years from the date of the second non-responsibility finding. The Procuring Agencies' Policy and associated procedures are included as **Exhibit I.L, "Procurement Lobbying Policy:**

**Restrictions on Contacts During the Procurement Process”** to this RFP. Further information about these requirements can be found at:

<http://www.ogs.ny.gov/aboutOGS/regulations/defaultAdvisoryCouncil.html>

- b. In order to ensure public confidence and integrity in the Procurement process, the Department will strictly control all communications between any Offeror and participants in the evaluation process, from the date this RFP is released until the Agreement is approved by OSC. “Offeror” means any individual or entity, or any employee, agent, consultant, or person acting on behalf of such individual or entity, who contacts the Department or any other State governmental entity about a governmental procurement during that procurement’s restricted period, whether or not the caller has a financial interest in the outcome of the governmental procurement; provided, however, that a governmental agency (or its employees) that communicates with the Department regarding a governmental procurement in the exercise of its oversight duties shall not be considered an Offeror. “Offeror” includes prospective Offerors prior to the due date for the submission of offers/bids in response to the solicitation document. All contacts, inquiries, questions, filings and submissions of Proposals in regard to this RFP must be directed, in writing, by mail, facsimile or e-mail, as applicable, solely to the Dispute Resolution Program Procurement Manager. An Offeror’s failure to comply with this requirement may result in the Offeror’s disqualification from this Procurement.

If using the U.S. Postal Service, please use the following address:

Dispute Resolution Program Procurement Manager  
Employee Benefits Division, Room 1106  
NYS Department of Civil Service  
Albany, New York 12239

For all other carriers including couriers, UPS, and FedEx, please use the following address:

Dispute Resolution Program Procurement Manager  
NYS Department of Civil Service  
Employee Benefits Division  
Agency Building 1  
Empire State Plaza  
Albany NY 12239  
Fax: 518-402-2835  
E-mail: [DRP2016RFP@cs.ny.gov](mailto:DRP2016RFP@cs.ny.gov)

Additionally, Offerors and prospective Offerors are strictly prohibited from making any contacts or inquiries concerning the Procurement with any member, officer or employee of

any NYS governmental entity other than the Department from the date this RFP is released until the Agreement is approved by OSC subject only to the specific exceptions listed below. Further, any Offeror shall not attempt to influence the Procurement in any manner that would result in a violation or an attempted violation of Public Officers Law sections 73(5) or 74.

- c. The following contacts are exempted from the provisions of paragraph 3 of section 139-j and as such do not need to be directed to the Dispute Resolution Program Procurement Manager pursuant to section 139-k:
- (1) The submission of written Proposals in response to this RFP;
  - (2) The submission of written questions by a method set forth in this RFP when all written questions and responses are to be distributed to all Offerors who have expressed an interest in the Procurement;
  - (3) Participation in a demonstration, conference or other means for exchange of information in a setting open to all potential bidders provided for in this RFP;
  - (4) Complaints by an Offeror regarding the failure of the Dispute Resolution Program Procurement Manager to respond to an Offeror's authorized contacts, when such complaints are made in writing to the Department's Office of the General Counsel, provided that any such written complaints shall become a part of the procurement record;
  - (5) Communications by a successful Offeror(s) who has been tentatively awarded a contract and is engaged in communications with the Department solely for the purpose of negotiating the terms of the Agreement after having been notified of tentative award;
  - (6) Contact by an Offeror to request the review of a procurement award when done in accordance with the procedure specified in the solicitation document;
    - (a) Contacts by an Offeror in protests, appeals or other review proceedings (including the apparent successful Offeror and its representatives) before the Department seeking a final administrative determination, or in a subsequent judicial proceeding;or

- (b) Complaints of alleged improper conduct in the Procurement when such complaints are made to the NYS Attorney General, Inspector General, District Attorney, or to a court of competent jurisdiction; or
  - (c) Written protests, appeals or complaints to the NYS Comptroller's office during the process of contract approval, where the NYS Comptroller's approval is required provided that the NYS Comptroller shall make a record of such communications and any response thereto which shall be entered into the procurement record pursuant to State Finance Law Section 163; or
  - (d) Complaints of alleged improper conduct in a governmental procurement conducted by a municipal agency or local legislative body to the NYS Comptroller's office; and
- (7) Communications between Offerors and governmental entities that solely address the determination of responsibility by a governmental entity of an Offeror.
- d. It is **mandatory** that all prospective Offerors/Offerors complete Part 1 of **Exhibit I.K, "Procurement Lobbying Offeror's Affirmation of Understanding and Agreement"** affirming their understanding of, and agreement to, comply with the procurement lobbying requirements set forth in State Finance Law §139-k and §139-j. A completed **Exhibit I.K** must be submitted to the Dispute Resolution Program Procurement Manager prior to a prospective Offeror making its initial contact with the Department (e.g., attendance at the Pre-Proposal Conference, submission of **Exhibit I.J, "Notice of Bidding Intention Form,"** submission of questions, etc. or concurrent with an Offeror's submission of its Proposal, whichever shall occur first). Offerors are advised that whenever any of the Offeror's officers, employees, agents or consultants contact the Department, they should be prepared to provide their name, address, telephone number, place of principal employment, occupation, and whether they were retained, employed or designated, by or on behalf of the Offeror to appear before or contact the Department in regards to this Procurement. To that end and to streamline the process, Offerors are requested to complete and submit Part 2 of **Exhibit I.K** entitled, "**Designated Offeror Contact**" for each officer, employee, agent or consultant authorized by the Offeror to appear before or contact the Department in regards to this Procurement before appearing or before or at the time such contact is initiated.

Additionally, at the time a Proposal is submitted to the Department, the Offeror is required to provide a completed “**Offeror’s Certification of Compliance Pursuant to State Finance Law §139-k**” form. This certification is included as **Exhibit I.P** of this RFP.

**3. Pre-Proposal Conference**

There will be no Pre-Proposal Conference held for this RFP.

**4. Notice of Bidding Intention Form**

Filing of this notice is **not** mandatory; however, to assist the Department in better managing the procurement process, prospective Offerors, whether they intend to submit a Proposal in response to this RFP or not, are requested to complete a “**Notice of Bidding Intention Form**” (**Exhibit I.J**) and submit it to the Dispute Resolution Program Procurement Manager by the Notice of Bidding Intention Deadline as set forth in Section II.A.1. The completed form may be submitted either in hardcopy, at the address provided in Section II.A.2.b. or electronically at: [DRP2016RFP@cs.ny.gov](mailto:DRP2016RFP@cs.ny.gov)

On the “**Notice of Bidding Intention Form**,” New York State certified Minority and Women-Owned Businesses (M/WBE) may request that their firm’s contact information be included on a list of M/WBE firms interested in serving as a subcontractor for this Procurement. The listing will be publicly posted on the Procurement webpage at:

[www.cs.ny.gov/DRP2016RFP/index.cfm](http://www.cs.ny.gov/DRP2016RFP/index.cfm) for reference by the bidding community. A firm requesting inclusion on this list should send a copy of its NYS M/WBE certification with its completed “**Notice of Bidding Intention Form.**”

**5. Submission of Errors or Omissions in this RFP Document**

By participating in activities related to this Procurement, and/or by submitting a Proposal in response to this RFP, prospective Offerors agree to be bound by its terms, including, but not limited to, this process by which a prospective Offeror may submit errors or omissions for consideration. In the event that a prospective Offeror believes there is an error or omission in this RFP, the prospective Offeror may raise such issue according to the following provisions:

**a. Process for Submitting Assertions of Errors or Omissions in RFP Document**

- (1) **Time Frame:** Assertions of errors or omissions in the Procurement process which are or should have been apparent prior to the Proposal Due Date must be received by the



Department, in writing, five (5) Business Days after the Release Date of Official Responses to Questions specified in Section II.A.1.

- (2) **Content:** The submission alleging the error or omission must clearly and fully state the legal and/or factual grounds for the assertion and must include all relevant documentation.
- (3) **Format of Submission:** All submissions asserting an error or omission must be in writing and submitted to the Dispute Resolution Program Procurement Manager in the following manner.

If using the U.S. Postal Service, please use the following address:

Dispute Resolution Program Procurement Manager  
Employee Benefits Division, Room 1106  
NYS Department of Civil Service  
Albany, New York 12239

For all other carriers including couriers, UPS, and FedEx please use the following address:

Dispute Resolution Program Procurement Manager  
NYS Department of Civil Service  
Employee Benefits Division  
Agency Building 1  
Empire State Plaza  
Albany NY 12239

The envelope or package must clearly and prominently display the following statement:

**"Submission of Errors or Omissions for the  
Dispute Resolution Program  
Request for Proposals #DRP-2016-1"**

**Any assertion of an error or omission which does not conform to the requirements set forth in this section shall be deemed waived by the prospective Offeror and the prospective Offeror shall have no further recourse.**

**b. The Review Process for Assertions of Errors or Omissions in RFP Document**

The Department shall conduct the review process for submission of errors or omissions. The Commissioner may appoint a designee who will review the submission and make a recommendation to the Commissioner as to the disposition of the matter. The Commissioner's designee may be an employee of the Department but, in any event, shall be someone who has not participated in the preparation of this RFP, the evaluation of

Proposals, or the selection decision. At the discretion of the Commissioner, or the Commissioner's designee, the prospective Offeror may be given the opportunity to meet with the Commissioner or the Commissioner's designee, as the case may be, to support its submission. The prospective Offeror may, but need not, be represented by counsel at such a meeting. Any and all issues concerning the manner in which the review process is conducted shall be determined solely by the Commissioner or the Commissioner's designee.

The Commissioner, or the Commissioner's designee, shall review the matter, and the Commissioner shall issue a written decision within twenty (20) business days after the close of the review process. If additional time for the issuance of the decision is necessary, the prospective Offeror shall be advised of the delay and of the time frame within which a decision may be reasonably expected. The Commissioner's decision will be communicated to the party in writing and shall constitute the agency's final determination in the matter.

The Department reserves the right to determine and to act in the best interests of the State in resolving any assertion of error or omission in this RFP document. As a consequence of reviewing the assertion, the Department may elect to extend the Proposal Due Date as may be appropriate. Notice of any such extension will be provided to all organizations who registered via mail, facsimile or e-mail. Notice of any extension will also be posted to:

[www.cs.ny.gov/DRP2016RFP/index.cfm](http://www.cs.ny.gov/DRP2016RFP/index.cfm)

**6. Submission of Questions**

In the event a prospective Offeror has any substantive or procedural questions concerning the content of this RFP document, those questions can be submitted in the following manner.

If using the U.S. Postal Service, please use the following address:

Dispute Resolution Program Procurement Manager  
Employee Benefits Division, Room 1106  
NYS Department of Civil Service  
Albany, New York 12239

For all other carriers including couriers, UPS, and FedEx, please use the following address:

Dispute Resolution Program Procurement Manager  
NYS Department of Civil Service  
Employee Benefits Division  
Agency Building 1  
Empire State Plaza  
Albany NY 12239

Prospective Offerors may submit questions to the Dispute Resolution Program Procurement Manager, in writing, via e-mail, facsimile or mail. The Department strongly urges prospective Offerors to submit the questions via e-mail. Each question should cite the particular RFP section, page number and paragraph number to which it refers. All responses will be considered unofficial until issued or confirmed in writing by the Department on the procurement website. Only those questions due prior to 5:00 p.m. Eastern Time (ET), on the Questions Due Date as shown in Section II.A.1. of this RFP, will be accepted.

To expedite its responses, the Department has provided a question template form which prospective Offerors are requested to use in submitting questions regarding this RFP (see **Exhibit I.R, “Question Template”**).

After the Questions Due Date, the Department will provide to all organizations who have registered, e-mail notification of the posting of all questions received and the Department’s Official Responses to said questions. The aforementioned information will be posted to: [www.cs.ny.gov/DRP2016RFP/index.cfm](http://www.cs.ny.gov/DRP2016RFP/index.cfm) and all registered prospective Offerors will be notified of the posting to this site.

**7. Submission of Proposal**

**a. Submission Requirements**

The Offeror’s Proposal must be organized and separated into three (3) separate parts: Administrative Proposal; Technical Proposal, and Cost Proposal. To facilitate the evaluation process, Offerors must submit twelve (12) separately bound hard copies (two (2) ORIGINALS and ten (10) copies) and one (1) electronic copy (CD) of each of the three (3) parts of the Offeror’s Proposal. Electronic submissions must be in Adobe Acrobat, as applicable. These thirty-six (36) documents and three (3) CDs are collectively hereafter referred to as “Submissions.”

Each ORIGINAL hard copy of each part must be marked "ORIGINAL," contain original signatures of an official(s) authorized to bind the Offeror to its provisions on all forms submitted that require the Offeror’s signature and should be numbered sequentially, i.e. Original #1, Original #2. The remaining ten (10) hard copies of each section may contain a copy of the official's signature and should be numbered sequentially (e.g. Copy #1, Copy #2, etc.). Please note that, for each of the three (3) sections, that hard copy marked “Original #1” will be deemed controlling by the Department when viewing the Proposal.

Proposals should be placed and packaged in sealed boxes/envelopes. Each sealed box/envelope should contain a label on the outside which contains the information below.

<p style="text-align: center;"><b>New York State Department of Civil Service Request for Proposals #DRP-2016-1 “<u>Dispute Resolution Program</u>”</b></p> <p style="text-align: center;"><b>OFFEROR NAME OFFEROR ADDRESS</b></p> <p style="text-align: center;">Indicate content, as applicable <b>ADMINISTRATIVE, TECHNICAL or COST PROPOSAL</b> <b>There must be no cost information included in the Offeror’s Administrative Proposal or Technical Proposal.</b></p>
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**All Proposals must be sent to the following:**

If using the U.S. Postal Service, please use the following address:

Dispute Resolution Program Procurement Manager  
Employee Benefits Division, Room 1106  
NYS Department of Civil Service  
Albany, New York 12239

For all other carriers including couriers, UPS and FedEx please use the following address:

Dispute Resolution Program Procurement Manager  
NYS Department of Civil Service  
Employee Benefits Division  
Agency Building 1  
Empire State Plaza  
Albany NY 12239

For those Offerors who plan to have the Proposal hand delivered, arrangements for acceptance of the packages must be made in accordance with procurement security procedures. **To make such arrangements, the Department requests that the Offeror notify the Dispute Resolution Program Procurement Manager forty-eight (48) hours prior to delivery. All Proposals must be received by 3:00 p.m. ET on the Proposal Due Date as set forth in Section II.A.1 of the RFP.** If the Proposal is delivered by mail or courier, the Department recommends that it be sent "return receipt requested," so the Offeror obtains proof of timely delivery.

All Proposals submitted become the property of the Department. Any proposal received after 3:00 p.m. ET on the Proposal Due Date will not be accepted by the Department and may be returned to the submitting entity at the Department’s discretion.

The Department will accept amendments and/or additions to an Offeror's Proposal if the amendment and/or addition is received by the Department **prior** to 3:00 p.m. ET on the Proposal Due Date. All amendments to an Offeror's Proposal must be submitted in writing, in accordance with the format set forth in Section II.A.6. of this RFP, and will be included as part of the Offeror's Proposal, if accepted by the Department as provided above.

Offerors are cautioned to verify the content of their Proposal before submission. Except for material received from an Offeror in response to a request by the Department, the Department will not accept amendments or additions to a Proposal if such material is received after 3:00 p.m. ET on the Proposal Due Date. Offerors are encouraged to submit the "**Proposal Submission Checklist**" (**Exhibit I.A**) to facilitate verification of Proposal contents. An Offeror's request to withdraw a Proposal after the Proposal Due Date may be considered at the sole discretion of the Department.

**b. Formatting Requirements**

The Administrative Proposal, Technical Proposal and Cost Proposal each should comply with the following formatting requirements (Failure to comply with the formatting requirements herein below may, but will not necessarily, result in the Proposal being deemed non-responsive and may, but will not necessarily, result in rejection of the Proposal):

- (1) **Binding of Proposal:** The Administrative and Technical Proposal must be separate, clearly labeled, and bound as one complete package. The Cost Proposal is required to be separately bound from the Administrative and Technical Proposals, or submitted in a separate sealed envelope, clearly labeled. The official name of the organization(s), the Proposal Due Date and "Dispute Resolution Program RFP #DRP-2016-1" must appear on the outside front cover of each copy of the package containing the Offeror's Administrative, Technical, and Cost Proposals. If the Proposals are submitted in loose-leaf binders, the official name(s) of the organization(s) and "Dispute Resolution Program RFP #DRP-2016-1" also must appear on the spine of the binders;
- (2) **Table of Contents:** Each Proposal must include a table of contents;

- (3) ***Index Tabs***: Each major Section of the Proposal, each subsection in the Technical Proposal and each Exhibit must be labeled with an index tab that completely identifies the title of the Section, subsection or Exhibit as named in the table of contents;
- (4) ***Pagination***: Each page of the Proposal, including Exhibits, must be labeled on the upper right with the Section title and Section reference, page number, and date. Pages within each Section and Exhibit must be numbered consecutively;
- (5) ***Proposal Updates/Corrections***: Each Offeror must submit its Proposal so that any update pages required by the Department can be easily incorporated into the Proposal. Should it be necessary for an Offeror to submit additional information in support of its Proposal, it must be submitted in accordance with the following: upon written notification by the Offeror and agreement by the Department, new or replacement pages may be placed in the Proposal. All new or replacement pages will show the date of the revision and indicate the portion of the page being changed. This latter requirement will be fulfilled by drawing vertical lines down both margins of all affected passages. All new/ replacement pages will be noted by the Department on the errata sheet to be placed at the front of the Proposal copy; and,
- (6) ***Required Content of Proposals***: The Proposal must consist of three parts: 1) the Administrative Proposal, which must respond to the requirements set forth in Section III of this RFP; 2) the Technical Proposal, which must respond to the requirements set forth in Section IV of this RFP; and 3) the Cost Proposal, which must respond to the requirements set forth in Section V of this RFP.

**c. Material Deviations**

New York State Law prohibits NYS from awarding a contract based upon material deviations from the specifications, terms, and conditions set forth in the RFP. Consequently, each Offeror's Proposal must conform to the specifications, terms, and conditions set forth in this RFP and prospective Offerors are strongly advised to raise issues and/or concerns relating to this Procurement during the question and answer phase rather than taking exceptions within their Proposals. Material deviations from the specifications, terms, and conditions set forth in the RFP may render the Proposal non-responsive and may result in rejection of the Proposal.

In general, a material deviation is one that would (i) impair the interests of NYS, (ii) place

the successful Offeror in a position of unfair economic advantage, (iii) place other Offerors at a competitive disadvantage, or (iv) which, if it had been included in the original RFP, could have formed a reasonable basis for an otherwise qualified Offeror to change its determination concerning the submission of a Proposal.

Offerors are advised that Offeror's standard, pre-printed material (including but not limited to: product literature, order forms, manufacturer's license agreements, standard contracts or other pre-printed documents), which are physically attached or summarily referenced in the Offeror's Proposal, unless specifically required by the RFP to be submitted as part of the Offeror's Proposal, will not be considered as having been submitted with or intended to be incorporated as part of the official offer contained in the Proposal, but rather will be deemed by the State to have been included by Offeror for informational or promotional purposes only.

In order to be deemed responsive to this RFP, the Offeror must submit a Proposal which independently satisfies all of the requirements set forth in this RFP, without substitution or modification ("stated requirements"). The Proposal will be evaluated against the requirements and specifications set forth in this RFP to determine the "best value" submission.

As stated above in part, New York State Law prohibits NYS from awarding a contract based upon material deviations from the specifications, terms, and conditions set forth in the RFP. Consequently, each Offeror's Proposal must conform to the specifications, terms, and conditions set forth in this RFP. In addition to, but not in lieu of, its response to the RFP's stated requirements, the Offeror may propose supplemental, "or equal", additional or alternative terms (Extraneous Terms) to the stated requirements within the Proposal, provided that, in the State's sole judgment, the Extraneous Term(s) does not constitute material deviations to the stated requirements. Proposed Extraneous Term(s) may only be considered by the State to the extent that such Extraneous Term(s) constitute non-material deviations from the requirements set forth in the RFP as determined in the Department's sole discretion. Material deviations from the specifications, terms, and conditions set forth in the RFP may render the Proposal non-responsive and may result in rejection of the Proposal.

Therefore, in order for Extraneous Term(s) to be considered, the Extraneous Term must:

- (1) Independently satisfy the applicable requirement(s) of the RFP on its own merits;

- (2) Be clearly and separately identified as an “Extraneous Term” within the Administrative, Technical and/or Cost Proposals - Extraneous Terms Submission; and
- (3) Be separately evaluated and scored in accordance with the bid evaluation criteria.

If the Offeror proposes to include Extraneous Terms in its official Proposal, the Offeror must meet all of the following requirements:

- (a) Each proposed Extraneous Term must be specifically enumerated in a separate section of the applicable Submission(s) (Administrative, Technical and/or Cost) labeled “Extraneous Terms Submission,” using the format as set forth in **Exhibit I.X** entitled, “**Extraneous Terms Template.**”
- (b) The “Extraneous Terms” section must be in writing prepared by the Offeror and may not include any pre-printed literature or vendor forms;
- (c) The writing must identify by part, section and title the particular RFP requirement (if any) which the Offeror proposes to supplement by inclusion of the Extraneous Term, with a brief description of the specific provision being modified by the Extraneous Term; and
- (d) The Offeror shall enumerate the proposed additional or alternative term from the RFP requirement, and the reasons therefore.

Only those terms meeting the above requirements (a) through (d) shall be considered as having been submitted as part of the formal offer.

Extraneous Term(s) submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, manufacturer’s license agreements, standard contracts or other pre-printed documents), which are physically attached or summarily referenced in the Proposal, or that, in the State’s sole judgment, have not been submitted in compliance with the above requirements (a) through (d) above, will not be considered as having been submitted with or intended to be incorporated as part of the official offer contained in the Proposal, but rather will be deemed by the State to have been included by Offeror for informational or promotional purposes only.



Absent the State's express written acceptance and incorporation of an Extraneous Term, acceptance and/or processing of the Proposal shall not constitute the State's acceptance of Extraneous Term(s) or be deemed a waiver of the State's rights set forth herein.

**8. Notification of Award**

A proposed award notification letter will be sent to the selected Offeror indicating a conditional award subject to successful contract negotiations. The remaining Offerors will be notified of the conditional award and the possibility that failed negotiations could result in an alternative award. No public discussion or news releases relating to this RFP, the associated Procurement process, including but not limited to the bid solicitation, proposal evaluation and award and contract negotiation processes or the Agreement shall be made by any Offeror or their agent without the prior written approval of the Department.

**9. Debriefing**

As stated in Section II.A.8 of this RFP, proposed award notification letters will be sent to the selected and non-selected Offerors. At that time, Offerors will be advised of the opportunity to request a Debriefing and the timeframe by which such requests must be made, dependent upon the nature of the Debriefing, i.e., pre-award or post-award. Debriefings are subject to the Department's Debriefing Guidelines which are set forth in **Exhibit I.H.** entitled, "**NYS Department of Civil Service Debriefing Guidelines.**" An unsuccessful Offeror's written request for a debriefing shall be submitted in the following manner.

If using the U.S. Postal Service, please use the following address:

Dispute Resolution Program Procurement Manager  
Employee Benefits Division, Room 1106  
NYS Department of Civil Service  
Albany, New York 12239

For all other carriers including couriers, UPS, and FedEx, please use the following address:

Dispute Resolution Program Procurement Manager  
NYS Department of Civil Service  
Employee Benefits Division  
Agency Building 1  
Empire State Plaza  
Albany NY 12239

**10. Submission of Award Protests**

By participating in activities related to this Procurement, and/or by submitting a Proposal in response to this RFP, an Offeror agrees to be bound by its terms including, but not limited to, the process by which an Offeror may submit protests of the selection award for consideration. In the event that an Offeror decides to protest the selection decision, the Offeror may raise such issue according to the following provisions.

**a. Process for Submitting Post Award Protests of the Selection Decision**

- (1) **Time Frame:** Any protest of the selection decision must be received no later than ten (10) Business Days after an Offeror's receipt of written notification by the Department of a conditional award.
- (2) **Content:** The protest must fully state the legal and factual grounds for the protest and must include all relevant documentation.
- (3) **Format of Submission:** The protest must be in writing and submitted to the Dispute Resolution Program Procurement Manager in the following manner.

If using the U.S. Postal Service, please use the following address:

Dispute Resolution Program Procurement Manager  
Employee Benefits Division, Room 1106  
NYS Department of Civil Service  
Albany, New York 12239

For all other carriers including couriers, UPS, and FedEx, please use the following address:

Dispute Resolution Program Procurement Manager  
NYS Department of Civil Service  
Employee Benefits Division  
Agency Building 1  
Empire State Plaza  
Albany NY 12239

A protest of the selection decision must have the following statement clearly and prominently displayed on the envelope or package:

**“Submission of Selection Protest for  
Dispute Resolution Program RFP #DRP-2016-1”**

**b. Process for Submitting Non-Responsive Determination Protest**

- (1) **Time Frame:** Any protest of a non-responsive determination must be received no later than ten (10) Business Days after an Offeror's receipt of written notification by the Department of the non-responsive determination.
- (2) **Content:** The protest must fully state the legal and factual grounds for the protest and must include all relevant documentation.
- (3) **Format of Submission:** All protest must be in writing and submitted to the Dispute Resolution Program Procurement Manager in the following manner.

If using the U.S. Postal Service, please use the following address:

Dispute Resolution Program Procurement Manager  
Employee Benefits Division, Room 1106  
NYS Department of Civil Service  
Albany, New York 12239

For all other carriers including couriers, UPS, and FedEx, please use the following address:

Dispute Resolution Program Procurement Manager  
NYS Department of Civil Service  
Employee Benefits Division  
Agency Building 1  
Empire State Plaza  
Albany NY 12239

A protest of the non-responsive determination must have the following statement clearly and prominently displayed on the envelope or package:

**“Submission of Non-Responsive Determination Protest for  
Dispute Resolution Program RFP #DRP-2016-1”**

Any assertion of protest which does not conform to the requirements set forth in this section shall be deemed waived by the Offeror, and the Offeror shall have no further recourse.

**c. Review of Submitted Protests**

The Department shall conduct the review process of submitted protests. The Department's Commissioner may appoint a designee to review the submission and to make a recommendation to the Commissioner as to the disposition of the matter. The Commissioner's designee may be an employee of the Department but, in any event, shall

be someone who has not participated in the preparation of this RFP, the evaluation of Proposals, the non-responsive determination, or the selection decision or the non-responsive determination. At the discretion of the Commissioner, or the Commissioner's designee, the Offeror may be given the opportunity to meet with the Commissioner or her designee, as the case may be, to support its submission. The Offeror may, but need not, be represented by counsel at such a meeting. The Department shall be represented by counsel at such meeting. Any and all issues concerning the manner in which the review process is conducted shall be determined solely by the Commissioner, or the Commissioner's designee. The Commissioner, or the Commissioner's designee, shall review the matter, and shall issue a written decision within twenty (20) business days after the close of the review process. If additional time is necessary for the issuance of the decision, the Offeror shall be advised of the time frame within which a decision may be reasonably expected. The Commissioner's decision will be communicated to the party in writing and shall constitute the Department's final determination in the matter.

In the event that an Offeror protests the selection decision or the non-responsive determination, the Department shall continue contract negotiations regarding the terms and conditions of the agreement with the selected Offeror.

The Department reserves the right to determine and to act in the best interests of the State in resolving any selection or non-responsive determination protest.

**11. Department of Civil Service Reservation of Rights**

In addition to any rights articulated elsewhere in this RFP, the Department reserves the right to:

- a. Make or not make an award under the RFP, either in whole or in part.
- b. Prior to the bid opening, amend the RFP. If the Department elects to amend any part of this RFP, notification of the amendment will be provided to all prospective Offerors who submitted a "**Procurement Registration Form**" and/or a "**Procurement Lobbying Offeror's Affirmation of Understanding and Agreement**" (**Exhibit I.K.**) via e-mail, facsimile or mail. Any amendments will also be posted to:

[www.cs.ny.gov/DRP2016RFP/index.cfm](http://www.cs.ny.gov/DRP2016RFP/index.cfm)

- c. Prior to the bid opening, direct Offerors to submit Proposal modifications addressing subsequent RFP amendments;
- d. Withdraw this RFP, at any time, in whole or in part, at the Department's sole discretion, prior to OSC approval of award of the contract.
- e. Waive any requirements that are not material;
- f. Disqualify any Offeror whose conduct and/or Proposal fails to conform to any of the mandatory requirements of this RFP;
- g. Require clarification at any time during the Procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an Offeror's Proposal and/or to determine an Offeror's compliance with the requirements of this RFP;
- h. Reject any or all Proposals received in response to this RFP, at its sole discretion;
- i. Change any of the scheduled dates stated in this RFP;
- j. Seek clarifications and revisions of Proposals;
- k. Establish programmatic and legal requirements to meet the Department's needs, and to modify, correct, and/or clarify such requirements at any time during the Procurement, provided that any such modifications would not materially benefit or disadvantage any particular Offeror;
- l. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the Offerors;
- m. For the purposes of ensuring completeness and comparability of the Proposals, analyze submissions and make adjustments or normalize submissions in the Proposal(s), including the Offeror's technical assumptions, and underlying calculations and assumptions used to support the Offeror's computation of costs, or to apply such other methods it deems necessary to make level comparisons across Proposals;
- n. Use the Proposal, information obtained through any site visits, management interviews, and the Department's own investigation of an Offeror's qualifications, experience, ability or

financial standing, and any other material or information submitted by the Offeror in response to the Department's request for clarifying information, if any, in the course of evaluation and selection under this RFP;

- o. Negotiate with the successful Offeror within the scope of this RFP in the best interests of the Department;
- p. Utilize any and all ideas submitted in the Proposal(s) received;
- q. Conduct contract negotiations with the next responsible bidder, should the Department be unsuccessful in negotiating with the selected Offeror; and
- r. Unless otherwise specified in this RFP, every offer is firm and not revocable for a minimum period of three hundred sixty- five (365) days from the Proposal Due Date as set forth in the RFP.
- s. Any Offeror whose Proposal might become eligible for a conditional award in the event that the intended selection is disqualified may be asked to extend the time for which their Proposal shall remain valid.

**12. Limitation of Liability**

The Department is not liable for any cost incurred by any Offeror prior to approval of the Agreement by OSC. Additionally, no cost will be incurred by the Department for any prospective Offeror or Offeror's participation in any Procurement related activities. The Department has taken care in preparing the data accompanying this RFP (hard copy exhibits, website exhibits, and sample document exhibits). However, the Department does not warrant the accuracy of the data; the numbers or statistics which appear in hardcopy exhibits, website exhibits, and sample document exhibits referenced throughout this RFP which are for informational purposes only and should not be used or viewed by prospective Offerors as guarantees or representations of any levels of past or future performance or participation. Accordingly, prospective Offerors should rely upon and use such numbers or statistics in preparing their Proposals at their own discretion.

**B. Compliance with Applicable Rules, Laws, Regulations, and Executive Orders**

This Procurement is being conducted in accordance with, and is subject to, the competitive bidding laws of the State of New York (New York State Finance Law, Article 11) and it is governed

by, at a minimum, the legal authorities referenced below. All Offerors must fully comply with the provisions and set forth in this Section II.B. of this RFP. The Department will consider for evaluation and selection purposes only those Offerors who agree to comply with these provisions whose Proposal contains the Statements, Formal Certifications, and Exhibits submissions required.

**1. Public Officers Law**

All Offerors and Offerors' employees and agents must be aware of and comply with the requirements of the New York State Public Officers Law ("POL"), particularly POL sections 73 and 74, as well as all other provisions of New York State law, rules and regulations, and policy establishing ethical standards for current and former State employees. In signing its Proposal, each Offeror guarantees knowledge and full compliance with such provisions for purposes of this RFP and any other activities including, but not limited to, contracts, bids, offers, and negotiations. Failure to comply with these provisions may result in disqualification from the Procurement process, termination, suspension or cancellation of the Agreement and criminal proceedings as may be required by law. Per Section III.C of this RFP, Offerors must submit an affirmative statement as to the existence of, absence of, or potential for conflict of interest on the part of the Offeror because of prior, current, or proposed contracts, engagements, or affiliations, by submitting a completed **Exhibit I.M, "Compliance with Public Officers Law Requirement"** in the Offeror's Administrative Proposal.

**2. Omnibus Procurement Act of 1994 and its 2000 Amendment**

Offerors are hereby notified that, if their principal place of business is located in a foreign or domestic jurisdiction that penalizes New York State vendors, and if the goods or services they offer would be produced or performed substantially outside New York State, the Omnibus Procurement Act of 1994 and its 2000 amendments require that they be denied contracts which they otherwise could obtain. The list of jurisdictions subject to this provision is set forth in Article 20 of Appendix A.

**3. Contractor Requirements and Procedures for business participation opportunities for New York State Certified Minority-and-Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women**

The Department has established a zero percent (0%) combined goal for the participation of MBEs and WBEs as subcontractors under the Contract based on its review of the 2010

Disparity Study prepared for the New York State Department of Economic Development and its review of the Empire State Development M/WBE Directory. The Department found no certified firms to offer dispute resolution program services. However, the Offeror is encouraged to use its best efforts to solicit and obtain the participation of MBEs and WBEs as subcontractors on the Contract. In furtherance of this goal, the Offeror is required to submit the following documents:

- a. An **“MWBE Utilization Plan”** – Form MWBE-100 (**Exhibit I.O**) with their bid or proposal. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to the Department.
  
- b. A **“Minority and Women-Owned Business Enterprises & Equal Employment Opportunity Policy Statement”**- Form MWBE and EEO Policy Statement (**Exhibit I.Q**)

#### **Equal Employment Opportunity Requirements**

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Appendix A – Standard Clauses for All New York State Contracts including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over twenty-five thousand dollars (\$25,000) 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, undertake or continue 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, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The Bidder will be required to submit a **“Minority and Women-Owned Business Enterprises and Equal Employment Opportunity Policy Statement”** (**Exhibit I.Q**), to the Department with their proposal.



To ensure compliance with this Section, the Bidder will be required to submit with its proposal an **“Equal Employment Opportunity Staffing Plan - Form EEO-100” (Exhibit I.G)** identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit an Equal Employment Opportunity Workforce Employment Utilization Compliance Report identifying the workforce actually utilized on the Contract, if known, through the New York State Contract System; provided, however, that a Bidder may arrange to provide such report via a non-electronic method by contacting the Department.

If awarded a Contract, the Offeror will be required each quarter to submit an **“Equal Employment Opportunity Workforce Utilization Compliance Report – Form EEO-101”** available at: <http://www.cs.ny.gov/pio/mwbe-eeo-forms.cfm>. Instructional materials related to the completion of **Form EEO-101** will be made available by the Department to the Offeror during the term of the Agreement that results from this RFP.

Further, pursuant to Article 15 of the Executive Law (the “Human Rights Law”), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will 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.

**Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.**

Per RFP Section III.C, executed copies of:

**Exhibit I.G** entitled **“EEO Staffing Plan (form EEO-100),”**

**Exhibit I.O** entitled, **“MWBE Utilization Plan (form MWBE-100),”** and

**Exhibit I.Q** entitled, **“Minority and Women-Owned Business Enterprises & Equal Employment Opportunity Policy Statement,”**

must be submitted as part of the Offeror's Administrative Proposal.

**4. Americans with Disabilities Act**

The Contractor will be required to assure its compliance with the Americans with Disabilities Act (42 USC§12101 et. seq.), in that any services and programs provided during the course of performance of the Agreement shall be accessible under Title II of the Americans with Disabilities Act, and as otherwise may be required under the Americans with Disabilities Act by submitting a completed “**Compliance with Americans with Disabilities Act**” form, **Exhibit I.N** in the Offeror’s Administrative Proposal.

**5. MacBride Fair Employment Principles Act & Non-Collusive Bidding Certification**

In accordance with Chapter 807 of the Laws of 1992, Offerors must certify whether they or any individual or legal entity in which the Offeror holds a ten percent (10%) or greater ownership interest, or any individual or legal entity that holds a ten percent (10%) or greater ownership in the Offeror have business operations in Northern Ireland. If an Offeror does have business operations in Northern Ireland, they must certify that they are taking lawful steps in good faith to conduct such business operations in accordance with the MacBride Fair Employment Opportunity 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.

The Department also requires that Offerors certify that prices in their Proposal have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition with any other Offeror or competitor. In addition, that unless required by law, the prices quoted in the Offeror’s Proposal have not been knowingly disclosed by the Offeror and will not knowingly be disclosed by the Offeror prior to opening, directly, indirectly, to any other Offeror or to any competitor. Offerors must also certify that no attempt has been made or will be made by the Offeror to induce any person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition. An executed copy of the combined “**MacBride Act Statement Form**” and “**Non-Collusive Bidding Certification**,” **Exhibit I.D** is required to be submitted in the Offeror’s Administrative Proposal.

**6. Vendor Responsibility Requirements – State Finance Law §163**

New York State Finance Law §163 requires contracts for services and commodities be awarded on the basis of lowest price or best value “to a responsive and responsible Offeror.” Furthermore, §163(9)f requires the Department to make a determination of responsibility of the

proposed Contractor prior to making an award.

To assist the Department in evaluating the responsibility of Offerors, a completed “**New York State Standard Vendor Responsibility Questionnaire**” must be submitted in the Offeror’s Administrative Proposal. A person legally authorized to represent the Offeror must execute the questionnaire. To the extent that the Contractor is proposing the use of Key Subcontractors or Affiliates (i.e., part of the Offeror’s proposed Account Team) and expected to receive more than \$100,000 in payments during the term of the Agreement, the Offeror must submit a completed “**New York State Standard Vendor Responsibility Questionnaire**” for each Key Subcontractor or Affiliate completed by a person legally authorized to represent the Key Subcontractor or Affiliate.

The Department recommends that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System; however, vendors may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at:

[http://www.osc.state.ny.us/vendrep/vendor\\_index.htm](http://www.osc.state.ny.us/vendrep/vendor_index.htm) or go directly to the VendRep System online at: <https://portal.osc.state.ny.us>.

Vendors must provide their New York State Vendor Identification Number when enrolling. To request assignment of a Vendor ID or for VendRep System assistance, contact the Office of the State Comptroller’s Help Desk at 866-370-4672 or 518-408-4672 or by email at: [itservicedesk@osc.state.ny.us](mailto:itservicedesk@osc.state.ny.us).

Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the VendRep website [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or may contact the Office of the State Comptroller’s Help Desk for a copy of the paper form.

#### **7. Tax Law Section 5-a Certification Regarding Sales and Compensating Use Taxes**

Section 5-a of the New York Tax Law requires that any contract valued at more than \$100,000 entered into by a State agency shall not be valid, effective, or binding against the agency unless the Contractor certifies to the Tax Department that it is registered to collect New York State and local sales and compensating use taxes, if the Contractor made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specified period. In addition, the Contractor must certify to the Tax Department that each affiliate and

subcontractor of such Contractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. For the purpose of this requirement, "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. The Contractor also must certify to the procuring state entity that it filed the certification with the Tax Department and that the certification is correct and complete. Accordingly, in the event the value of the Agreement exceeds \$100,000, the Contractor must file a properly completed "**Form ST-220-CA,**" **Exhibit I.E** with the Department and a properly completed "**Form ST-220-TD,**" **Exhibit I.F** 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 "**Form ST-220-TD**" has been filed by the Contractor or if a previously filed "**Form ST-220-TD**" is no longer correct and complete.

Submission of these forms ("**ST-220-CA**" and "**ST-220-TD**") is **NOT** required at time of Proposal submission however, the selected Offeror will be required to complete and submit these forms as a condition of contract award. These forms may also be found at:

[http://www.tax.ny.gov/forms/sales\\_cur\\_forms.htm](http://www.tax.ny.gov/forms/sales_cur_forms.htm)

**8. Disclosure of Proposal Contents – Freedom of Information Law (FOIL)**

**NOTICE TO OFFEROR'S LEGAL COUNSEL**

All materials submitted by an Offeror in response to this RFP shall become the property of the Department and may be returned to the Offeror at the sole discretion of the Department. Proposals may be reviewed or evaluated by any person, other than one associated with a competing Offeror, designated by the Department. Offerors may anticipate that Proposals will be evaluated by staff and consultants retained by the Department and may also be evaluated by staff of other NYS agencies interested in the provision of the subject services including, but not limited to, the Governor's Office of Employee Relations and the Division of the Budget, unless otherwise expressly indicated in this RFP. The Department has the right to adopt, modify, or reject any or all ideas presented in any material submitted in response to this RFP.

To request that materials be protected from FOIL disclosure, the Offeror must follow the

procedures below regarding the New York State Freedom of Information Law (FOIL). If an Offeror believes that any information in its Proposal or supplemental submission(s) constitutes proprietary and/or trade secret information and desires that such information not be disclosed if requested pursuant to the New York State Freedom of Information Law, Article 6 of the Public Officers Law, the Offeror must make that assertion by completing **Exhibit I.C, "Freedom of Information Law – Request for Redaction Chart."** The Offeror must complete the form specifically identifying by page number, line, or other appropriate designation, the specific information requested to be protected from FOIL disclosure and the specific reason why such information should not be disclosed. Page 2 of Exhibit I.C contains information regarding appropriate justification for protection from FOIL disclosure. Vague, non-specific, summary allegations that material is proprietary or trade-secret are inadequate and will not result in protection from FOIL disclosure.

The completed **Exhibit I.C** must be submitted to the Department at the time of its Proposal submission; it should be included with the Requested Redactions (CD and Hard Copy), described below. It should not be included in the Offeror's Proposal. If the Offeror chooses not to assert that any Proposal material and/or supplemental submission should be protected from FOIL disclosure, the Offeror should so advise the Department by checking the applicable box on **Exhibit I.C** and submitting it to the Department at the time of its Proposal submission, but separately from its Proposal. If a completed **Exhibit I.C** form is not submitted, the Department will assume that the Offeror chooses not to assert that any proposal material or supplemental submission, as applicable should be protected from FOIL disclosure.

The FOIL-related materials described herein will not be considered part of the Offeror's Proposal and will not be reviewed as a part of the Procurement's evaluation process.

**Requested Redactions (CD and Hard Copy):**

At the time of Proposal submission, the Offeror is required to identify the portions of its Proposal that it is requesting to be redacted, in accordance with the instructions below, to be used in the event that its Proposal is the subject of a Freedom of Information Law (FOIL) request received by the Department:

The Offeror must provide an electronic copy of the Administrative Proposal, the Cost Proposal and the Technical Proposal, each on a separate CD, which reflect the Offeror's requested redactions. Additionally, the Offeror must provide a separately bound hardcopy of each of the three (3) Proposal documents with redactions marked that are included on the CDs. The

electronic documents must be prepared in PDF format using the Redaction Function in Adobe Acrobat Professional software, version 8 or higher. Each specific portion of the Proposal documents requested to be protected from FOIL disclosure must be identified using the Adobe **“Mark for Redaction” function; do not use the “Apply Redactions” function.** The resulting documents must show the Offeror’s requested redactions as outlined, while the content remains visible. This will allow the Department to either apply or remove requested redactions when responding to FOIL requests. The documents included on the CD and in hard copy must be complete Proposals, including all Exhibits and Attachments. No section may be omitted from the CD or hard copy even if the entire section is requested to be redacted; such sections should be marked for redaction, not removed. For forms, exhibits and charts please mark for redaction only those cells/fields/entries that meet the criteria for protection from FOIL, not the entire page.

During the Proposal evaluation process, the Department may request additional information through clarifying letters and at management interviews. Any requested redactions for additional written material provided by the Offeror in response to the Department’s requests also must be submitted following the instructions, above.

**9. Compliance with New York State Workers’ Compensation Law**

Sections 57 and 220 of the New York State Workers’ Compensation Law (WCL) provide that the Department shall not enter into any contract unless proof of workers’ compensation and disability benefits insurance coverage is produced. Prior to entering into a contract with the Department, the selected Offeror and Key Subcontractor(s) or Affiliates, with more than \$100,000 in expected expenses over the life of the contract, if any, will be required to verify for the Department, on forms authorized by the New York State Workers’ Compensation Board, the fact that they are properly insured or are otherwise in compliance with the insurance provisions of the WCL. The forms to be used to show compliance with the WCL are listed in **Exhibit I.W, “Compliance with NYS Workers’ Compensation Law.”** Any questions relating to either workers’ compensation or disability benefits coverage should be directed to the State of New York Workers’ Compensation Board, Bureau of Compliance at 518-486-6307. You may also find useful information at their website: <http://www.wcb.ny.gov>.

Submission of the proof of workers’ compensation and disability benefits insurance coverage is required at the time of Proposal submission. Failure to provide verification of either of these types of insurance coverage with the Offeror’s Administrative Proposal may be grounds for disqualification of an otherwise successful Proposal.

To the extent that the Offeror is proposing the use of Key Subcontractors or Affiliates (i.e., part of the Offeror's proposed Project Team), the Offeror must verify for the Department, on forms authorized by the New York State Workers' Compensation Board, the fact that the Key Subcontractors or Affiliates are properly insured or are otherwise in compliance with the insurance provisions of the WCL.

**10. Iran Divestment Act**

By submitting a Proposal in response to this solicitation or by assuming the responsibility of a contract awarded hereunder, Offeror/Contractor (or any assignee) certifies 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" 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 such contract any subcontractor that is identified on the Prohibited Entities List. Additionally, Offeror/Contractor is advised that should it seek to renew or extend an Agreement awarded in response to the solicitation, it must provide the same certification at the time the Agreement is renewed or extended.

During the term of the Agreement, should the Department of Civil Service receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the Department of Civil Service 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 Department of Civil Service 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.

The Department of Civil Service reserves the right to reject any Proposal, 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.

### 11. New York Subcontractors and Suppliers

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the State and the nation. In recognition of their economic activity and leadership in doing business in New York State, Offerors for this contract for Dispute Resolution Program or are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Offerors need to be aware that all authorized users of this contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in utilizing services and technology. Furthermore, Offerors are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the Contractor and its New York State business partners. New York State businesses will promote the Contractor's optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects Offerors to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers. Offerors are required to complete **Exhibit I.U.2, "NYS Subcontractors and Supplies."**



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**SECTION III: ADMINISTRATIVE PROPOSAL**

This section of the RFP sets forth the requirements for the Offeror's Administrative Proposal submission, including the Minimum Mandatory Requirements that must be satisfied to qualify an Offeror to be considered for selection. The Department will accept Proposals only from qualified Offerors and will consider for evaluation and selection purposes only those Proposals the Department determines to be in compliance with the Minimum Mandatory Requirements set forth in this Section III of this RFP.

The Offeror's *Administrative Proposal* must respond to all of the following items as set forth below in the order and format specified and using the forms set forth in this RFP. Additional details pertaining to the required forms are found in Section II.B Compliance With Applicable Rules, Laws, Regulations & Executive Orders, and Section III.

The Administrative Proposal must contain the following information, in the order enumerated below:

**A. Formal Offer Letter**

At this part of its Administrative Proposal, the Offeror must submit a formal offer in the form of the "**Formal Offer Letter**" as set forth in **Exhibit I.S**. The formal offer must be signed and executed by an individual with the capacity and legal authority to bind the Offeror in its offer to the State. Each of the two copies of the Offeror's Administrative Proposal marked "ORIGINAL" requires a letter with an original signature; the remaining copies of the Offeror's Administrative Proposal may contain photocopies of the signature. The Offeror must accept the terms and conditions as set forth in this RFP, Section VII, and Appendices A, B, C, C-1, D, D-1 and D-2 and agree to enter into a contractual Agreement with the Department containing, at a minimum, the terms and conditions identified in this RFP section and appendices as cited herein. (**Note:** Appendix A, "Standard Clauses for New York State Contracts" is a compilation of statutory requirements applicable to all persons and entities contracting with the State and therefore has been deemed to be non-negotiable by the Offices of the Attorney General and the State Comptroller. Appendix B, "Standard Clauses for All Department Contracts", Appendix C, "Third Party Connection and Data Exchange Agreement", Appendix C-1 "Information Security Standards", 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 are compilations of standard clauses/ requirements for the

contracts and also are non-negotiable.) If an Offeror proposes to include the services of a Key Subcontractor(s) or Affiliate(s), the Offeror must be required to assume responsibility for those services as “Prime Contractor.” The Department will consider only the Prime Contractor in regard to contractual matters.

**B. Minimum Mandatory Requirements**

The Department will only accept Proposals from Offerors that attest and demonstrate through current valid documentation to the satisfaction of the Department that the Offeror meets the Proposal's Minimum Mandatory Requirements set forth herein this Section III.B of this RFP. At this part of its Administrative Proposal, the Offeror must submit a completed **Exhibit I.T “Offeror Attestations Form”** representing and warranting that:

1. The Offeror, as of the Proposal Due Date, possesses the legal capacity to enter into a Contract with the Department;
2. The Offeror understands and agrees to comply with all specific duties and responsibilities set forth in Section IV of this RFP;
3. The Offeror's principal place of business is not located in a state that penalizes New York State vendors and that, if selected goods or services provided under the Agreement will not be substantially produced or performed in such a state;
4. The Offeror has obtained Full Accreditation by the Utilization Review Accreditation Commission (URAC) in the area of Independent Review Organization. The Offeror must submit proof that the Full Accreditation was obtained at or before the Proposal Due Date. URAC Accreditation must be maintained throughout the term of the Agreement;
5. The Offeror, if selected, will, under the Agreement, maintain and make available as required by the State, a complete and accurate set of records as may be required by the State to be produced for review by the State pursuant to the terms and conditions of this RFP, Appendices A and B, and including any and all financial records as deemed necessary by the State to discharge its fiduciary responsibilities to Program participants and to ensure that public dollars are spent appropriately; and
6. The Offeror understands it must distribute Program communication materials in both paper and/or electronic format.

**Note: Any Offeror which fails to satisfy any of the above Minimum Mandatory Requirements shall be eliminated from further consideration.**

**C. Exhibits**

At this part of its Administrative Proposal, the Offeror must complete and submit the various Exhibits specified in Section II.B and Section III of this RFP, in satisfaction of the regulatory requirements described therein. A listing of the required Exhibits is set forth below:

<b>Exhibit Name</b>	<b>Exhibit</b>
Proposal Submission Requirement Checklist	<b>Exhibit I.A</b>
MacBride Statement and Non-Collusive Bidding Certification	<b>Exhibit I.D</b>
EEO Staffing Plan (Form EEO-100)	<b>Exhibit I.G</b>
Offeror's Affirmation of Understanding and Agreement	<b>Exhibit I.K*</b>
Compliance with Public Officer's Law Requirements	<b>Exhibit I.M</b>
Compliance with Americans with Disabilities Act	<b>Exhibit I.N</b>
MWBE Utilization Plan (Form MWBE-100)	<b>Exhibit I.O</b>
Offeror's Certificate of Compliance Pursuant to State Finance Law §139-k	<b>Exhibit I.P</b>
M/WBE and EEO Policy Statement	<b>Exhibit I.Q</b>
Formal Offer Letter	<b>Exhibit I.S</b>
Offeror Attestations Form	<b>Exhibit I.T</b>
Key Subcontractors or Affiliates	<b>Exhibit I.U.1</b>
NYS Supplier and Subcontractor	<b>Exhibit I.U.2</b>
Program References	<b>Exhibit I.V</b>
Compliance with NYS Workers' Compensation Law	<b>Exhibit I.W</b>
Extraneous Terms Template (if proposing)	<b>Exhibit I.X</b>

**\*Note: If not already provided to the Department by the time of Proposal submission, the Offeror must enclose a completed Exhibit I.K - Offeror's Affirmation of Understanding and Agreement with their Administrative Proposal.**

**D. Key Subcontractors or Affiliates**

At this part of its Administrative Proposal, the Offeror must provide a statement identifying all Key Subcontractors or Affiliates, if any, that the Offeror will be contracting with to provide Program Services and must, for each such Key Subcontractor or Affiliate identified, complete and submit **Exhibit I.U.1**; "Key Subcontractors or Affiliates:"

1. Provide a brief description of the services to be provided by the Key Subcontractor or Affiliate; and
2. Provide a description of any current relationships with such Key Subcontractor or Affiliate and the clients/projects that the Offeror and Key Subcontractor or Affiliate are currently servicing under a formal legal agreement or arrangement, the date when such services began and the status of the Project.

The Offeror must indicate whether or not, as of the date of the Offeror's Proposal, a subcontract (or shared services agreement) has been executed between the Offeror and the Key Subcontractor or Affiliate for services to be provided by the Key Subcontractor or Affiliate relating to this RFP. If the Offeror will not be subcontracting with any Key Subcontractor(s) or Affiliate(s) to provide Project Services, the Offeror must provide a statement to that effect.

**E. Reference Checks**

At this part of its Administrative Proposal, for the purpose of reference checks, the Offeror must list two (2) references of current clients and one (1) reference of a former client for a total of three (3) references for which the Offeror has supplied Dispute Resolution Program Services similar to those required in this RFP. If the Offeror has no former clients to include as references, the Offeror must include a statement attesting to that fact. Otherwise, the Offeror must include, at minimum, one (1) former client as a reference for which the Offeror has supplied services similar in nature to those required in this RFP. If the Offeror is proposing any Key Subcontractors or Affiliates, the references should be with clients for whom the Offeror and Key Subcontractor or Affiliate have jointly supplied services similar to those described in this RFP. For each Reference provided the Offeror must complete and submit **Exhibit I.V**, entitled "Program References." The Offeror shall be solely responsible for providing contact names and phone numbers that are readily available to be contacted by the State. The Offeror must also indicate what participation, if any, the Program manager and each key staff person proposed for this Program had in the referenced services.

**F. Financial Statements**

At this part of its Administrative Proposal, the Offeror must, provide a copy of the Offeror's last issued GAAP annual audited financial statement. A complete set of statements, not just excerpts, must be provided. Additionally, for each Key Subcontractor or Affiliate, if any, that provides any of the Project Services; which are the subject matter of this RFP, provide the most recent GAAP annual audited statement. If the Offeror, or a Key Subcontractor or Affiliate, is a privately held

business and is unwilling to provide copies of their GAAP annual audited financial statements as part of their Proposal, the Offeror/Key Subcontractor/Affiliate must make arrangements for the Procurement evaluation team to review the financial statements.

**Note:** If financial statements have not been prepared and/or audited, the Offeror /Key Subcontractor/ Affiliate must provide the following as part of its Administrative Proposal: a letter from a bank reference attesting to the Offeror/Key Subcontractor/Affiliate's financial viability and creditworthiness. (Note: For purposes of this reference, the Offeror may not give as a reference, a parent or subsidiary company, a partner or an Affiliate organization.) The letter must include the bank's name, address, contact person name and telephone number and it must address, at a minimum, the following items:

1. A brief description of the business relationship between the parties (i.e., the Offeror/Key Subcontractor/Affiliate and the bank), including the duration of the relationship and the Offeror's current standing with the bank. For example: *"The (Offeror/Key Subcontractor/ Affiliate's name) is currently and has been for "x" number of years a client in good standing"*;
2. Description of any ownership/partner relationship that may exist between the parties, if any. (**Note:** One party cannot be the parent, partner or subsidiary of the other, nor can one party be an affiliate of the other); and,
3. Any other facts or conclusions the bank may deem relevant to the State in regard to the bank's assessment of the Offeror /Key Subcontractor/Affiliate's financial viability and creditworthiness concerning the nature and scope of the Program Services, which are the subject matter of this RFP, and the Parties (i.e., Department, and the Offeror or the Offeror and Key Subcontractor or Affiliate) contractual obligations should the Offeror be awarded the resultant Contract.

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**SECTION IV: TECHNICAL PROPOSAL REQUIREMENTS**

The Department seeks through this RFP process to award a Contract (Agreement) to a qualified Offeror to provide Dispute Resolution Program Services. The purpose of this section of this RFP is to set forth the programmatic duties and responsibilities required of the Offeror by the Department and to obtain required submissions concerning those duties and responsibilities. The Offeror's Technical Proposal must contain responses to all of the required submissions from the Offeror in the format requested. Each Offeror may submit only one Technical Proposal. Each Offeror's Technical Proposal will be evaluated based on each Offeror's responses to the required submissions contained in this Section IV of this RFP.

**Note:** Numbers, data, or statistics which may appear in the Exhibits referenced throughout this RFP are for informational purposes only and should not be used or viewed by prospective Offerors as guarantees or representations of any levels of past or future performance or participation.

**The Department will accept Proposals only from qualified Offerors and will consider for evaluation and selection purposes only those Proposals that it determines meet the Minimum Mandatory Requirements in Section III of this RFP and are responsive to the duties and responsibilities set forth in this Section IV of this RFP.**

**Please note that Offerors must not include any cost information in the Technical Proposal, including exhibits or attachments. Specific savings estimates (dollars or percentages) must not be quoted in the Technical Proposal or in any exhibits or attachments submitted with the Technical Proposal. Proposed Performance guarantee amounts including fee amounts to be put at risk are not considered to be cost information and therefore should be included in the Technical Proposal.**

**A. Program Administration**

**1. Executive Summary**

**a. Required Submission**

The Offeror must submit an Executive Summary outlining its overall program and its capacity to administer the Dispute Resolution Program (also hereafter collectively referred to as the "DRP" or the "Program"). The Executive Summary must include:

- (1) The name and address of the Offeror's main and branch offices and the name of the senior officer who will be responsible for this account;

- (2) A description of the Offeror's understanding of the requirements presented in this RFP and how the Offeror can assist the Department in accomplishing its objectives;
- (3) A statement explaining the Offeror's, and the Offeror's Key Subcontractor's, previous experience providing DRP Services to other state governments, large public entities or any other organization administering workers' compensation programs. Detail how this experience qualifies the Offeror and, if applicable, the experience of its Key Subcontractors to undertake the functions and activities required by this RFP;
- (4) A statement disclosing the date Full Accreditation was granted to the Offeror by the Utilization Review Accreditation Commission (URAC) in the area of Independent Review Organization; and
- (5) Specify which function(s), if any, will be subcontracted.

**2. General Qualifications**

The Offeror must have the experience, reliability, and integrity to administer the DRP as required by this RFP.

**a. Required Submission**

The Offeror must demonstrate its acceptance of the Program duties and responsibilities set forth in this RFP and ensure full compliance with the Program's benefit design. The Offeror must demonstrate that it has the financial and operational wherewithal to administer the Program as required by this RFP. Offerors should provide detailed responses to the following:

- (1) What experience does the Offeror have in implementing, managing, and providing a DRP similar to the one described in this RFP? Include the timetable for implementation of each referenced client's DRP, adherence to the schedule (e.g. was it implemented on time?), how long the client's DRP has been in operation, any issues that arose during implementation or ongoing operation, and an explanation of how those issues were resolved.
- (2) Explain how the Offeror's account team will be prepared to meet the requirements of the DRP?

- (3) What internal systems or procedures will the Offeror have in place to provide financial, legal, and audit oversight of its Agreement with the DRP?

**B. Program Services**

The Offeror must demonstrate its capacity to provide the required Program Services described in this Section IV of this RFP.

**1. Account Team**

The Department expects the successful Offeror to have in place a proactive, experienced Program manager and an experienced team who have the authority to coordinate the appropriate resources to implement and administer the Program.

**a. Duties and Responsibilities**

- (1) The Offeror 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.
- (a) The Offeror 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 Offeror must advise the Department immediately if replacement of the Program manager is contemplated during the term of the Agreement;
- (b) The Offeror 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.
- (2) The Offeror's assigned account 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.
- (3) The Offeror's assigned account team must immediately notify the Department of actual or anticipated events impacting DRP costs and/or delivery of Services to Employees such as but not limited to, legislation, litigation, and operational issues.



- (4) The Offeror's assigned account team must ensure that the DRP is in compliance with all legislative and statutory requirements. If the Offeror is unable to comply with any legislative or statutory requirements, the Department must be notified in writing immediately. The Offeror must work with the Department to develop accurate DRP material.
- (5) The Offeror 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.

**b. Required Submission**

- (1) Provide an organizational chart and narrative description illustrating how the Offeror proposes to administer, manage, and oversee all aspects of the DRP. Include the names, qualifications, and job descriptions of the key individuals proposed to comprise the implementation, operational, clinical, and management team for the Offeror and its Key Subcontractor(s) (if applicable). Complete **Exhibit I.B**, Biographical Sketch Form, of this RFP for all key members of the proposed account management team. Where key individuals are not named, include qualifications of the individuals that you would seek to fill the positions. Include the following:
  - (a) Reporting relationships and the responsibilities of each key position of the account management team; and how the team will interact with other business units or functional areas within the Offeror's organization. The Offeror must include the percentage of time (by position) dedicated to the Program and reporting relationships. Describe how the account management team interfaces with senior management and ultimate decision makers within the Offeror's organization;
- (2) Describe the experience of the individual who will assume the role of Program manager for the DRP. Include a description of the individual's experience with clients whose needs were of similar size and scope as those of the Department.
- (3) Confirm that the account team will be readily accessible to the Program. Describe where the account team will be based.

- (a) Describe how the Offeror proposes to ensure that timely responses (one (1) Business Day) are provided to administrative concerns and inquiries.
- (b) Describe the protocols that will be put into place to ensure the Department will be kept abreast of actual or anticipated events impacting Program costs and/or delivery of Services to Employees. Provide a representative scenario.
- (4) Describe the corporate resources that will be available to the account team to ensure compliance with all legislative and statutory requirements. Confirm the Offeror's commitment to notify the Department immediately if the Offeror were to be unable to comply with any legislative or statutory requirements and to work with the Department to take the appropriate remedial action to come into compliance as soon as practicable.

**2. Implementation Plan**

The Offeror must have a strong implementation plan to ensure that the Program will be fully functioning on February 1, 2017. The Offeror's implementation plan must be detailed, comprehensive, and exhibit a firm commitment by the Offeror to complete all Program implementation activities by January 31, 2017.

**a. Duties and Responsibilities**

- (1) The Offeror must undertake and complete all start-up and implementation activities no later than January 31, 2017, so that the Program as described in this RFP is fully operational on February 1, 2017. Activities shall include but not be limited to specific activities set forth in Section IV.B.2.a.(2)(a)-(d) of this RFP.
- (2) ***Implementation and Start-Up Guarantee:*** The Offeror must complete all implementation and start-up activities no later than January 31, 2017, so that, effective February 1, 2017, the Offeror can assume full operational responsibility for the Program. For the purpose of this guarantee, the Offeror must on, or before January 31, 2017:
  - (a) Establish a comprehensive Network of DRP Reviewing Physicians, which meets the requirements set forth in Section IV.B.3.a(1)-(11) of this RFP, to conduct Medical Documentation Reviews;

- (b) 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 DCS;
- (c) 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
- (d) 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.

**b. Required Submission**

- (1) Provide a detailed implementation plan (narrative diagram and timeline) upon Contract approval, on or about November 1, 2016 that results in the implementation of all Program Services by the required date of February 1, 2017, indicating: roles, responsibilities, estimated timeframes for individual task completion, testing dates and objectives, and areas where complications may be expected.
- (2) **Implementation and Start-Up Guarantee.** The Offeror must guarantee that all of the implementation and start-up requirements listed forth in Section IV.B.2.a.(2)(a)-(d) of this RFP is fully operational on or before January 31, 2017. The Offeror shall propose a dollar amount to be forfeited for each calendar Day that all implementation and start-up guarantees are not met.

*The Standard Credit Amount for this guarantee is one hundred dollars (\$100). However, Offerors may propose higher dollar amounts.*

The Offeror must propose its implementation and start-up performance guarantee in the format set forth below:

The dollar amount the Offeror will credit the Department, for each calendar Day that all implementation and start-up requirements are not met beyond January 31, 2017 is \$\_\_\_\_\_.

**3. Reviewing Physician Network****a. Duties and Responsibilities**

The Offeror shall be responsible for establishing and maintaining a network of Reviewing Physicians (RPs) that meets the following requirements:

- (1) RPs must be authorized by the New York State Workers' Compensation Board (WCB) as treating or consulting physicians pursuant to New York State Workers' Compensation Law.
- (2) RPs must have specialized expertise in the treatment and/or diagnosis of work-related injuries/illnesses.
- (3) RPs must be certified specialists in the appropriate field when that certification is necessary for making and evaluating degree of disability determinations.
- (4) 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.
- (5) RPs shall testify before the Board when appropriate and necessary.
- (6) The Offeror shall contract with RPs. This includes negotiating fees and making payments to RPs for Services rendered under this Program. RPs shall not look to DCS for payment of any kind.
- (7) The Offeror shall assure that the RP is not the Staff, Treating or Evaluating Physician, as defined in this RFP.
- (8) The Offeror must ensure that the RP complete the Medical Documentation Reviews within the appropriate Program Review Period.
- (9) The Offeror must ensure that RP's decision to support either the Treating or Evaluating determination regarding an Employee's degree of disability are based on the 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

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Evaluating Physicians. NB: for NYSCOPBA Employees, copies of DCS job descriptions will be provided by the Department

- (10) The Offeror must provide a written report of the Medical Documentation Review decision as to whether the documentation better supports either the Treating or Evaluating 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.
- (11) ***Program Review Period Service Level Standard:*** The Program's Review Period Service Level Standard requires the Offeror to issue a Medical Documentation Review decision as to whether the documentation better supports either the Treating or Evaluation Physician's degree of disability determination within the required seven (7) calendar Day Program Review Period. The Program Review Period begins on the date that the Offeror receives complete medical documentation from the Treating and Evaluating Physicians necessary to establish a Valid Appeal.

**b. Required Submission**

- (1) Complete **Exhibit III.B**, DRP Network Count, of this RFP describing the composition of the Offeror's current network and the network that the Offeror proposes to establish for this Program.
- (2) Provide a detailed description of the Offeror's plan to develop or expand the Offeror's existing network to meet the specified minimum requirements by January 31, 2017, if the Offeror does not currently have a network of Reviewing Physicians that meets the minimum requirements as described in Section IV.B.3.a(1)-(11) of this RFP. This plan should include timetables and the number and type of additional physician specialties to be recruited for the network.
- (3) Describe the Offeror's process for profiling RPs and measuring outcomes. Such outcomes include, but are not limited to: Appeal dispositions; timeliness of Medical Documentation Reviews; and clarity and thoroughness of reports filed.

- (4) Submit a copy of the medical guidelines that will be used by RPs in evaluating degree of disability for injuries/illnesses. These guidelines must comply with appropriate New York State laws, rules and regulations. Describe the frequency of and process the Offeror will use to update these guidelines.
- (5) Describe the controls in place to ensure that the RP is not the Staff, Treating or Evaluating Physician, and that RPs complete their Medical Documentation Reviews within the Program Review Period(s).
- (6) Describe the controls in place to ensure that the RP's decision supporting the Treating Physician's or the Reviewing Physician's determination regarding the Employee's degree of disability is based on the review of the Employee's medical documentation, reports, and other appropriate documentation that 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
- (7) Provide a sample report the Offeror proposes to use to document the Medical Documentation Review decisions to the Employee, the Employing Agency, the Treating Physician, the Evaluating Physician, the appropriate Union and the Fund, if applicable. The report must include a statement in support of either the Treating or Evaluating Physician's degree of disability determination.
- (8) Describe the Offeror's approach to contracting RP's for the DRP network. Include:
  - (a) a description of how the Offeror will ensure that the Offeror's proposed review network meets the certification and credentialing requirements of this RFP;
  - (b) the criteria the Offeror uses to select the RPs for the Program;
  - (c) the steps the Offeror would take to promptly add Reviewing Physicians to the network in order to address increased Appeals volume or an Appeal related to a rare or unique injury/illness; and
  - (d) an explanation of whether the RPs are employees or independent contractors. If they are independent contractors, provide a sample copy of the Offeror's physician contract.

- (9) Describe times in which the Offeror failed to meet the required timelines of medical documentation review periods for current clients. Describe why the timelines were not met, the remedial steps taken, and controls implemented to prevent recurrence.

**4. Program Communications**

**a. Duties and Responsibilities**

The Offeror shall be responsible for providing all Program communications which shall include, at a minimum:

- (1) Mailing services, telephone, facsimile capabilities, and/or electronic media transmissions for the secure transfer and receipt of information between the Offeror and the Employee, Treating Physician, Evaluating Physician, Employing Agency, appropriate Union and the Fund.
- (2) Developing, subject to DCS approval, and distributing Program communication material in sufficient quantities to State Agency Personnel Offices in a paper and electronic format, including but not limited to:
  - (a) an Appeal Request Form which must be used by eligible Employees to file an Appeal under the DRP (see **Exhibit III.C**, Sample Appeal Request Form, of this RFP for a sample);
  - (b) 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 (see **Exhibit III.D**, Sample Brochure, of this RFP for a sample); and
  - (c) other information or material proposed by the Offeror to assure the effective implementation and delivery of the required Program Services.
- (3) Accounting and paying 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.

**b. Required Submission**

- (1) Describe the process the Offeror will use to ensure a HIPAA compliant method for the confidential and secure transfer and receipt of information between the Offeror and the Treating Physician, Evaluating Physician, Employing Agency, appropriate Union, and the Fund.
- (2) Describe the approach the Offeror recommends for working with the DCS to design, seek approval, and distribute required communication materials for the DRP. Include sample materials that the Offeror uses with other customers or, if none are appropriate, proposed drafts for the Program.
- (3) State the Offeror's agreement to work with the Department to develop appropriate customized materials for the Program.
- (4) Confirm if the Offeror has staff within its organization or a Key-Subcontractor that specializes in Program communications. What is their capacity to provide the communication support described above?

**5. Maintenance of Confidential Employee Records**

**a. Duties and Responsibilities**

The Offeror 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:

- (1) Maintaining 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 selected Offeror within ninety (90) Days of its receipt of information used to establish the medical case record, the selected Offeror 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 selected Offeror shall limit further uses and disclosures of such Confidential Information to those purposes that make the return or destruction of the Confidential Information infeasible.
- (2) Using appropriate, documented safeguards to prevent the use or disclosure of Program Confidential Information other than as required by this RFP. The selected Offeror shall



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

**b. Required Submission**

- (1) Describe the Offeror's process that is HIPAA compliant, for establishing, maintaining, and securing confidential case records.
- (2) Submit a copy of the Offeror's information security program that includes administrative, technical, and physical safeguards for confidential medical case records. If company policy precludes distribution of the information security program, the Offeror must make arrangements for the Departments review.

**6. Reporting**

**a. Duties and Responsibilities**

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

- (1) ***Monthly Appeals Summary Report***: The Offeror 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 Offeror should closely follow the format specified by the Department in **Exhibit III.E**, Sample Monthly Report of Appeals, of this RFP. The report is due thirty (30) Days after the end of each month.
- (2) ***Quarterly Medical Documentation Review Summary Report***: Each quarter, the Offeror 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 Offeror should closely follow the format specified by the Department in **Exhibit III.F**, Sample Quarterly Report of Appeal Specialties, of this RFP. The report is due thirty (30) Days after the end of each quarter.
- (3) ***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.

- (4) **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 Offeror during the term of the Agreement that results from this RFP.
- (5) **Management Reports Performance Guarantee:** The Offeror must guarantee that the management reports listed in Section IV.B.6.a.(1) and (2) will be accurately prepared and delivered to the Department no later than their respective due dates inclusive of the date of receipt.

**b. Required Submission**

- (1) Confirm the Offeror will deliver accurate and timely management reports to the Department as specified in Section IV.B.6.a.(1) and (2) of this RFP.
- (2) Confirm that the Offeror will provide reports in the specified format (paper and or electronic Microsoft Access, Excel, Word) as determined by the Department.
- (3) Confirm the Offeror's ability and willingness to provide Ad Hoc reports and other data analysis. Provide examples of Ad Hoc reporting that the Offeror has performed for other clients.
- (4) **Management Reports Performance Guarantee:** The Management Report Performance Guarantee requires that, for each management report listed in Section IV.B.6.a.(1) and (2) of this RFP, accurate management reports will be delivered to the Department no later than their respective due dates.

The Offeror shall propose a dollar amount for each Business Day to be forfeited for each failure to deliver an accurate management report by its respective due date. *The Standard Credit amount for this guarantee is twenty-five dollars (\$25).*

The Offeror must propose the guarantee in the following format:

For each management report listed in Section IV.B.6.a.(1) and (2) of this RFP that is not substantially accurate and/or received by its respective due date, the Offeror shall

forfeit the dollar amount of \$\_\_\_\_\_ per 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. Transition and Termination of Contract**

The Offeror shall ensure that upon termination of the Agreement, any transition to another organization be done in a way that provides uninterrupted access to Program Services through final termination of the Agreement. In addition, the Offeror and the selected successor shall fully cooperate with the Department to create and establish a Transition Plan in a timely manner.

**a. Duties and Responsibilities**

- (1) The Offeror must commit to fully cooperate with the successor contractor to ensure the timely, smooth transfer of information necessary to administer the Program.
- (2) The Offeror must, within ninety (90) Days of the end of the Agreement, or within fifteen (15) Days of notification of termination, if the Agreement is terminated prior to the end of its term, provide the Department with a detailed written plan for transition (Transition Plan).
- (3) Within fifteen (15) Business Days from receipt of the Transition Plan, the Department shall either approve the Transition Plan or notify the Offeror, in writing, of the changes required to the Transition Plan so as to make it acceptable to the Department.
- (4) Within fifteen (15) Business Days from the Offeror's receipt of the required changes, the Offeror shall incorporate said changes into the Transition Plan and submit such revised Transition Plan to the Department for approval.
- (5) The selected Offeror shall be responsible for transitioning the Program in accordance with the approved Transition Plan.
- (6) To ensure that the transition to a successor organization provides Employees with uninterrupted access to Program Services, and to enable the Department to effectively manage the Agreement, the Offeror is required to provide the following Contractor related obligations to the Program through the final financial settlement of the Agreement which includes but is not limited to:

- (a) completing all required reports in the reporting section of this RFP;
- (b) providing the Program with sufficient staffing in order to address State audit requests and reports in a timely manner;
- (c) agreeing to fully cooperate with all the Department or Office of the NYS Comptroller (OSC) audits consistent with the requirements of Appendices A and B;
- (d) performing timely reviews and responses to audit findings submitted by the Department and the OSC's audit unit in accordance with the requirements set forth in Article XVI "Audit Authority," of Section VII, Contract Provisions of this RFP; and
- (e) remitting reimbursement due to the Program in a timely manner upon final audit determination consistent with the process specified in Article XVI "Audit Authority" of Section VII, Contract Provisions and Appendix B of this RFP.

**b. Required Submission**

- (1) Provide an outline of the key elements and tasks that the Offeror proposed would be included in its Transition Plan to ensure that all the required duties and responsibilities are completed if the Offeror were to be the incumbent Contractor. Include a brief explanation on how the Offeror would accomplish this with the successor contractor.

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**SECTION V: COST PROPOSAL REQUIREMENTS****A. General:**

The information in this Section A, and Section B below, is presented for use by Offerors' in developing their Cost Proposal. Additional information which may impact an Offeror's proposed pricing may be contained in other sections of this RFP, including but not limited to Section VII. Each Offeror may submit **only one** Cost Proposal.

1. The **Valid Appeal Fee** rate quoted must be a uniform all-inclusive rate to be assessed and paid for each completed Appeal under the Program to cover all of the Offeror's costs in fulfilling its duties and responsibilities in the performance of Program Services as set forth in this RFP. The **Valid Appeal Fee** charged to the Department for such Services shall be quoted on a uniform all-inclusive dollar amount, per completed appeal. The rate quoted may change annually on February 1<sup>st</sup> each year over the five (5) year term of the Contract, as specified in **Exhibit IV**, DRP Cost Exhibit - Valid Appeal Fee.
2. The Offeror shall not charge the Program for Appeal requests that are incomplete or are not deemed to be Valid Appeals.
3. As of February 2016, there are approximately 30,000 Employees eligible to participate in the DRP and an estimated 5,000 workers' compensation injuries/illnesses filed for these groups each year. The Offeror shall assume that the number of reviews to be completed under the Agreement shall be consistent with the DRP Services summary presented in Exhibit III.A of this RFP. However, the Department cannot guarantee that, during the term of the Agreement, the same enrollment mix and number of Appeals as those set forth in Exhibit III.A of this RFP will exist.
4. The Contractor shall bill the Department on a monthly basis for Dispute Resolution Program Valid Appeal fees via the submission of a monthly invoice. Upon the Contractor's submission of a monthly invoice and supporting documentation, the Department shall prepare a voucher to submit to the Office of the State Comptroller (OSC). After OSC review, OSC shall electronically transfer the requested funds to the Contractor. On average, payment will be within 30 Days after the receipt of the monthly invoice by the Department. Performance credits (if any) will be reflected in the monthly invoice and deducted from the amount paid to the Contractor.

**B. Offeror's Cost Proposal**

The following describes the requirements for Offerors' Cost Proposal submissions:

1. The Department expects Offerors will propose aggressive pricing consistent with the size of the Department's Program. Offerors must complete and submit **Exhibit IV**, Dispute Resolution Program Cost Proposal, of this RFP setting forth its proposed Valid Appeals Fees. Offerors' proposed Valid Appeals Fees as set forth in the Offeror's **Exhibit IV** submission must be **guaranteed** for the term of the Agreement, although Offerors may propose varying fee levels for each year of the Agreement.

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**SECTION VI: EVALUATION AND SELECTION CRITERIA**

Proposals determined by the Department to satisfy the submission requirements set forth in Section III of this RFP will be evaluated by the Department and the Governor's Office of Employee Relations (GOER), assisted by any person(s), other than one associated with a competing Offeror, designated by the Department. Proposals will be made available to representatives of State employee unions for review and comment. An Offeror's Proposal may be removed from the evaluation process and not be considered should it be determined that the Offeror did not demonstrate to have met one or more of the Minimum Mandatory Requirements set forth in Section III of this RFP, despite any attestation made by the Offeror regarding the Minimum Mandatory Requirements.

During the evaluation process, the Department may require clarifying information from an Offeror for the purpose of assuring the Department's full understanding of the Offeror's responsiveness to the RFP requirements and the duties and responsibilities set forth therein. This clarifying information must be submitted in writing in accordance with formats set forth in Section II of this RFP and, if submitted timely, shall be included as a formal part of the Offeror's Proposal. Failure to provide required information by the due date set forth in the Department request for clarification may result in rejection of the Offeror's Proposal. Nothing in the foregoing shall mean or imply that it is obligatory upon the Department to seek or allow clarifications provided for herein. The Department may, at its discretion, elect to perform site visits of Offerors facilities and have all Offerors provide oral presentations pertaining to their Proposal. The Dispute Resolution Program Procurement Manager will coordinate the arrangements with Offerors, as necessary.

The Department will consider for evaluation and selection purposes only those Proposals that, as determined by the State, meet the Minimum Mandatory Requirements specified in Section III of this RFP and are responsive to the duties and responsibilities set forth in this RFP. The evaluation will entail the review and scoring of the Offeror's Administrative, Technical, and Cost Proposals. The Technical and Cost evaluation process is based on 1,000 available points with 500 points available to the Technical Proposal and 500 points available to the Cost Proposal (i.e. 50% allocated to the Technical Proposal and 50% allocated to the Cost Proposal). The Technical Proposal and Cost Proposal are evaluated separately and scored as described below.

The Department intends to select the responsive and responsible Offeror whose Proposal offers the best value to the Department and the State as specified in the following evaluation criteria for the purpose of entering into negotiations for the execution of a Contract (i.e., the Agreement).

**A. Technical Evaluation – 50% of Overall Score**

The Technical Proposal of those Offerors' that meet the Minimum Mandatory Requirements will be evaluated by the Department, and others deemed appropriate by the Department. Each Offeror's ability and willingness to deliver the Program Services described in this RFP will be evaluated and scored based on a weighted point system. The evaluation of the Offeror's Technical Proposal will be based on that Offeror's written Technical Proposal; responses to clarifying questions, if any; information obtained through reference checks, including specific reference checks made with the Directors' of Employee Benefits at the Department and GOER for any Offeror (contract/Key Subcontractors) who performed services under a contract with the Department and, as deemed necessary by the Department, oral presentation(s) conducted to amplify and/or clarify that Offeror's proposed Technical Proposal; and site visits.

**1. Technical Score Ratings**

Offerors' Technical Proposals will be evaluated based on the following rating scale and criteria as applied to the Offeror's response to each evaluated requirement, except in the case of performance guarantees. A rating of "excellent" equates to a score of 5 for each evaluated requirement. Each reduction in the ratings results in a one point reduction in the score such that a rating of "poor" equates to a score of 1.

**EXCELLENT (5)**

The Offeror far exceeds the requirements. The response provided indicates that the Offeror will provide very high quality Program Services and is very pro-active and innovative.

**GOOD (4)**

The Offeror exceeds the requirements. The response provided indicates that the Offeror will exceed the Program's needs. The Offeror demonstrates some innovative features not shown in typical Proposals.

**MEETS CRITERIA (3)**

The Offeror meets but does not exceed the requirements. The response provided indicates that the Offeror will meet the Program's needs.



**FAIR (2)**

The Offeror's response is minimal; or the answer is very general and does not fully address the requirements; or the Offeror meets only some of the requirements.

**POOR (1)**

The Offeror misinterpreted or misunderstood the requirements; or the Offeror does not answer the requirements in a clear manner, or the Offeror does not address or meet the requirement.

The Offeror's commitment to meet or exceed the various Service Level Standards, including their associated standard performance credit amounts, as set forth in this RFP, will be evaluated and scored based on the following rating scale and criteria. For each Service Level Standard, said rating scale and criteria will be applied to the two components of the Offeror's proposed response to a given Service Level Standard: 1) the Offeror's proposed level of performance as guaranteed, and 2) the Offeror's proposed credit amount to be applied to the Offeror's Monthly Administrative Fee for the failure to meet the Offeror's guaranteed level of performance, as proposed (Credit Amount) to arrive at a score for a given Service Level Standard. (**Note:** An Offeror's proposed level of performance as guaranteed and its proposed credit amount are hereinafter collectively referred to as a "performance guarantee.")

**2. Performance Guarantee Ratings**

A rating of "excellent" equates to a score of 5 for each evaluated Service Level Standard.

Each reduction in the ratings results in a one point reduction in the score such that a rating of "poor" equates to a score of 1.

Offeror may propose performance guarantees that exceed the minimum Service Level Standards and its associated standard performance credit amounts presented in this RFP. Proposed performance guarantees are contained within the respective technical areas and will be evaluated using the following rating scale and criteria:

**a. EXCELLENT (5)**

- (1) The Offeror's proposed level of performance as guaranteed exceeds the Program's Service Level Standard contained in this RFP; and
- (2) The Offeror's proposed credit amount is one hundred and twenty-five percent (**125%**) or more of the standard performance credit amount stated in this RFP.

**b. GOOD (4)**

- (1) The Offeror's proposed level of performance as guaranteed equals the Program's Service Level Standard contained in this RFP, and the Offeror's proposed credit amount is one hundred and twenty-five percent (**125%**) or more of the standard performance credit amount stated in this RFP; or
- (2) The Offeror's proposed level of performance as guaranteed exceeds the Program's Service Level Standard contained in this RFP; and the Offeror's proposed credit amount is greater than one hundred percent (**100%**) but less than one hundred and twenty-five percent (**125%**) of the standard performance credit amount stated in this RFP.

**c. MEETS CRITERIA (3)**

- (1) The Offeror's proposed level of performance as guaranteed equals or exceeds the Program's Service Level Standard contained in this RFP; and
- (2) The Offeror's proposed credit amount equals the standard performance credit amount stated in this RFP.

**d. FAIR (2)**

- (1) The Offeror's proposed level of performance as guaranteed equals or exceeds the Program's Service Level Standard contained in this RFP; and
- (2) The Offeror's proposed credit amount is greater than fifty percent (**50%**) but less than one hundred percent (**100%**) of the standard performance credit amount stated in this RFP.

**e. POOR (1)**

- (1) The Offeror's proposed level of performance as guaranteed is below the Program's Service Level Standard contained in this RFP regardless of the credit amount proposed by the Offeror; or
- (2) The Offeror's proposed credit amount is fifty percent (**50%**) or less of the standard performance credit amount stated in this RFP regardless of the level of performance as guaranteed by the Offeror.

### 3. **Performance Guarantee Standard Credit Amounts**

- a. **Implementation and Start-Up Guarantee (Section IV.B.2.b.(2))**: The standard performance credit amount is one-hundred dollars (\$100);
- b. **Program Review Period Service Level Guarantee (Section IV.B.3.b.(9))**: The standard performance credit amount is fifty dollars (\$50); and
- c. **Management Reports Performance Guarantee (Section IV.B.6.b.(4))**: The standard performance credit amount is twenty-five dollars (\$25).

### 4. **Allocation of Technical Score Points**

The scores referenced above shall be applied to weighted point values associated with each evaluated requirement. The relative point value for each section of the Technical Proposal is as follows:

#### a. **Program Management - 15% of Total Technical Score**

Offerors will be rated on various components of Program Management including the Offeror's qualifications, executive summary, account team, and Program implementation plan.

#### b. **Program Services Delivery and Support Services – 85% of Total Technical Score**

Offerors will be rated on various components of Program Services delivery including Reviewing Physician network, Program communications, maintenance of confidential Employee records, and management reporting.

### 5. **Technical Scoring**

The Offerors' Technical Proposal will be evaluated independently by multiple evaluators based on pre-established Evaluation Criteria. Individual scores will then be averaged. The average score for each response shall be applied to the points associated with each evaluated requirement such that an average score of "Excellent" for each evaluated requirement will result in a maximum of 1,000 points. The points associated with each evaluated requirement are totaled for each Offeror and will then be converted to a score such that the Offeror with the highest point total will receive a Technical Score of 500; the highest Technical Score. As calculated by the Dispute Resolution Procurement Manager, all other evaluated Technical Proposals will be awarded a Technical Score at a reduced level calculated in accordance with a pre-determined formula as set forth in the

Evaluation Criteria. That formula calculates the Technical Score of the evaluated Technical Proposal based on the proportion of the point total of the evaluated Technical Proposal to the point total of the Technical Proposal with the highest point total. The awarded Technical Scores are calculated to the hundredth decimal place.

**B. Cost Evaluation - 50% of Overall Score**

The Cost Proposal of those Offerors that meet the Minimum Mandatory Requirements will be evaluated by the Department, and others as deemed appropriate by the Department. The Department will calculate a Cost Score for each Offeror based on the evaluated Total Program Cost for the five-year period, February 1, 2017 to January 31, 2022.

1. To evaluate the total DRP cost, the evaluator will verify the Total Program Cost for each Offeror as the sum of the Offeror's quoted DRP Valid Appeal Fee from **Exhibit IV** of the Offeror's Cost Proposal. The evaluation of Offerors' Cost Proposals shall be based on the sum of the Valid Appeal Fee quoted for Years one (1) through five (5) of the Contract multiplied by the pre-determined average annual utilization level of such services.
2. The Department reserves the right to analyze and/or normalize. The Department reserves the right to make other cost calculation adjustments as necessary to determine the evaluated cost of Offerors' Cost Proposals. Any such adjustments shall be made with the intent to evaluate Offerors' Cost Proposals on a fair and consistent basis, without prejudice. These normalization adjustments may include, but are not limited to, any unforeseen circumstances whereby the normalization of specific factors among Offerors shall result in a more accurate and fair comparison of the Offeror's Cost Proposal.
3. A Cost Score for each Offeror will be determined based on the following formula, with the lowest Total Program Cost as calculated in accordance with Section VI.B.1. receiving the maximum points:

$$\text{Cost Score} = 500 \times \frac{\text{Lowest Evaluated Total Program Cost}}{\text{Total Program Cost of Proposal being scored}}$$

Scores will be calculated to the hundredth decimal place.

**C. Total Combined Score of Technical and Cost**

The results of the Technical and Cost evaluations as set forth in Sections VI.A and VI.B of this RFP will be applied to calculate the Offeror's Total Combined Score. The Total Combined Score shall represent the Technical Score plus the Cost Score.

**D. Best Value Determination**

The Department shall select, and enter into negotiations for the purpose of executing a contract, with the responsive and responsible Offeror with the highest Total Combined Score. If an Offeror's Total Combined Score is equal to or less than one (1) point below the highest Total Combined Score, that Offeror's proposal will be determined to be substantially equivalent to the Offeror holding the highest Total Combined Score. Among any Offeror Proposals deemed substantially equivalent, the Department shall select the Offeror that has the highest Cost Score calculated pursuant to Section VI.B.3. of this RFP to enter into negotiations for the purpose of executing a contract.

**Please note** that the terms in Appendix A, Standard Clauses for All New York State Contracts, Appendix B, Standard Clauses for all Department Contracts, Appendix C, Third Party Connection and Data Exchange Agreement, C-1, Information Security Standards, 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 are **not** subject to negotiation.

If the Department determines that Contract negotiations between the Department and the selected Offeror are unsuccessful, the Department may invite the Offeror with the next highest Total Combined Score to enter into negotiations for purposes of executing a contract. Prior to negotiating with the Offeror with the next highest Total Combined Score, the Department will notify the Offeror originally selected and provide the date when negotiations shall cease should an agreement not be reached. Scores will not be recalculated for any remaining Offerors should Contract negotiations between the Department and the selected Offeror be unsuccessful because of material differences in key provision(s).

**SECTION VII: AGREEMENT PROVISIONS****AGREEMENT NO. C000XXX**

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 \_\_\_\_\_ (“Contractor”), a corporation authorized to do business in the State of New York with a principal place of business located at \_\_\_\_\_, 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] and the State Police Commissioned/Non-Commissioned

Officers Unit [represented by the Police Benevolent Association of New York State Troopers, Inc. (PBA)].

- 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;

**4.1.5** Appendix C-1 – Information Security Standards

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

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

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

**4.1.9** 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 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;
  - 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 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 Psychiatry. 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 \$\_\_\_\_\_.

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

**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 HIPPA 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:**  
**Title:**  
**Address:**  
**Telephone Number:**  
**Facsimile Number:**  
**E-Mail Address:**

**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.

**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.

(Remainder of this page has been left intentionally blank)



Contractor: \_\_\_\_\_

Contract Number:     C000XXX    

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: \_\_\_\_\_

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

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

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

**(Contractor)**

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

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

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

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

STATE OF            )  
                          ) ss:  
COUNTY OF        )

On the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me personally came \_\_\_\_\_, to me known, and known to me to be the person who executed the above instrument, who, being duly sworn by me, did for her/himself depose and say that (s)he is the \_\_\_\_\_ of \_\_\_\_\_ the corporation or organization described in and (s)he had authority to execute the above instrument; and that (s)he signed his/her name thereto.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires: \_\_\_\_\_

**Approved as to form:  
ATTORNEY GENERAL**

**Approved:  
STATE COMPTROLLER**

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

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

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

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

**SECTION VIII: GLOSSARY OF TERMS**

**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.

**AG** means the New York State Attorney General's Office.

**Agreement or Contract** means the Agreement entered into between the Parties resultant from this RFP.

**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.

**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.

**Appeal Request Form** means a form designed by the selected Offeror 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.

**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.

**Business Day(s)** means Monday through Friday, except for those designated as Business Holidays.

**Business Holiday(s)** means legal Holidays observed by the State.

**Calendar Year/Annual** means a period of 12 months beginning with January 1 and ending with December 31.

**Commissioner** means the Commissioner of the New York State Department of Civil Service.

**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.

**Contract or Agreement** means the Agreement entered into between the Parties resultant from this RFP.

**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.

**Day(s)** means calendar Days unless otherwise noted.

**Department or DCS** means the New York State Department of Civil Service.

**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.

**Employee** means a person who is appointed to one of the Employing Agencies delineated in Section I of this 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.

**Employer** means “Employer” as defined in 4 NYCRR Part 73, as amended.

**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.

**ET** means prevailing Eastern Time.

**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.

**Fund** means the State Insurance Fund, the State agency that acts as the State’s workers’ compensation insurance carrier.

**GOER** means the New York State Governor’s Office of Employee Relations.

**Group 1** means Employees belonging to the Security Services Unit, Security Supervisors Unit, Agency Police Services Unit and Professional Services Negotiating Unit.

**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.

**HIPPA** means Health Insurance Portability and Accountability Act of 1996, as amended.

**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 Program Services over the term of the Agreement that results from this RFP, as well as any vendor who will provide Program Services in an amount lower than the \$100,000 threshold, and who is a part of the Contractor’s account team.

**Labor Agreement(s)** means the negotiated collective bargaining agreements between the State and the Security Services Unit (represented by NYSCOPBA), 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] and the State Police Commissioned/ Non-Commissioned Officers Unit [represented by the Police Benevolent Association of New York State Troopers, Inc. (PBA)].

**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.

**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.

**Medical Documentation Review** means the Contractor's review of the conflicting medical reports submitted by the Employee's Treating Physician and the Evaluating Physician.

**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 to Light Duty Assignment.

**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.

**MWBE** means Minority-and Women-Owned Business Enterprises.

**NYS or State** means the State of New York (including the New York State Department of Civil Service).

**Offeror** means any responsible and eligible entity submitting a responsive Proposal to the RFP. It shall be understood that references in the RFP to "Offeror" shall include said entity's proposed Key Subcontractor or Affiliates, if any.

**OSC** means the New York State Office of the State Comptroller.

**Pass Day** means day of the week the Employee is not scheduled to work.

**President** means the President of the Civil Service Commission who is also the Commissioner of the Department.

**Program** means the New York State Dispute Resolution Program (DRP).

**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.

**Program Services or DRP Services** means all of the services to be provided by the Contractor as set forth in the RFP.

**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.

**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.

**RFP or Procurement** means the Request for Proposals, entitled "New York State Dispute Resolution Program," dated June 15, 2016.

**Service Level Standard** means the Department's expected performance level of service that the selected Offeror must meet or exceed for the New York State Dispute Resolution Program.

**Services** means the Program services including, but not limited to, the Workers' Compensation Dispute Resolution Program Medical Documentation Review to be provided by the Offeror as required by the Dispute Resolution Program as set forth in this RFP.

**Staff Physician** means the physician(s) employed by the New York State Police responsible for determining Employees' fitness for duty.

**State** means the State of New York.

**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.

**Treating Physician** means the physician chosen by the Employee to provide direct care for his/her disability.

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

**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.

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

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.



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## **STANDARD CLAUSES FOR NYS CONTRACTS**

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

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

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

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$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](mailto:opa@esd.ny.gov)

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

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

The Omnibus Procurement Act of 1992 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**

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**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 Information Technology Services (ITS), 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 15<sup>th</sup> 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, 11<sup>th</sup> 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](http://www.osc.state.ny.us/epay/index.htm), by e-mail at [epunit@osc.state.ny.us](mailto: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


with principal offices at


(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.

<i>Third Party Name:</i>	<i>NYS Department of Civil Service (DCS)</i>
Authorized Signature	Authorized Signature
Name ( <i>Print</i> )	Name ( <i>Print</i> )
Date	Date



## 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.



**Appendix C**  
**Page 3 of 16**

- 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
Address:	
Attention:	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](mailto: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](mailto: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.



**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 *[Insert Contractor Name]* via an SFTP connection. Limited *[Insert Contractor Name]* staff has inquiry access to NYBEAS to verify NYSHIP enrollment in *[Insert Contractor Name]*. The enrollment information is used by *[Insert Contractor Name]* 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:

Audit Controls:

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

Method of Disposal of media and paper:

User Account Management, including review of accounts:

Physical Security:

Other:

**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):

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

**H. Approximately how long will the connection be needed?**



- Up to 6 months
- 6 – 12 months
- More than 12 months
- Specific time period:

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

**I. Other useful information**

**J. Third Party Information**

Name of Third Party: Main Phone Number:

Main Office Address:

*Management Contact*

Name: Department:

Address: Email Address:

Phone Number: Manager's Name:

Manager's Phone:

*Backup Contact*

Name: Department:

Address: Email Address:

Phone Number: Manager's Name:

Manager's Phone:

*Technical Contact*

Name: Department:

Address: Email Address:

Phone Number:

Manager's Name: Manager's Phone:

Technical Support Hours:



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**

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Escalation List:

Domain name(s):

Host name(s):



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

User 1 (*name, phone, email*):

User 2 (*name, phone, email*):

User 3 (*name, phone, email*):

User 4 (*name, phone, email*):

User 5 (*name, phone, email*):

User 6 (*name, phone, email*):

User 7 (*name, phone, email*):

User 8 (*name, phone, email*):

User 9 (*name, phone, email*):

User 10 (*name, phone, email*):

**K. Other information**





**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> ):			
Organization:			
Telephone Number:	Area code	Number	Extension
Office Address:			

<i>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.</i>	
User Signature:	Date:

**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	DCS Business Unit (Loaning Organization)	
	Point Of Contact	
	Work Location	Telephone
Shipping Address ( <i>If different from borrower's</i> )	Manager's Name	
	Date To Be Loaned	
	Date To Be Returned	
<b>Equipment To Be Loaned</b>		
Quantity	Description	Value
Purpose Of Loan		
<b>CONDITIONS OF LOAN</b>		
<ol style="list-style-type: none"> <li>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.</li> <li>Upon termination of this Agreement, Borrower shall uninstall all DCS software included in this Agreement from Borrower's computer and/or network equipment.</li> <li>The Borrower shall not make <b>any</b> copies of DCS software included in this Agreement.</li> <li>In case of loss or damage beyond repair, DCS shall be reimbursed by Borrower at the current price of replacement.</li> <li>The equipment shall not be loaned or transferred to a third party without the written consent of DCS.</li> <li>The right is reserved to cancel the loan or recall the equipment upon ____ days' notice.</li> <li>The Borrower shall assume all shipping and/or transportation costs involved.</li> <li>Other conditions:</li> </ol>		



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

**ADMINISTRATIVE SERVICES DIVISION**  
**Third Party Connection and Data Exchange Agreement**  
**Attachment 4 –Equipment Loan Agreement**  
 ADM-125 (4/06)

**Appendix C**  
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<b>Agreed (Borrower)</b>	<b>Approved (DCS)</b>
Borrowing Organization	Loaning Organization
Signature Of Authorized Official	Signature Of Authorized Official
Title	Title
Date	Date
<b>RECEIPT OF EQUIPMENT</b>	
<b>Borrower</b> ( <i>Upon initial receipt</i> )	<b>DCS Lender</b> ( <i>Upon termination of Agreement</i> )
Borrowing Organization	Loaning Organization
Signature Of Authorized Official	Signature Of Authorized Official
Title	Title
Date	Date

## APPENDIX C-1

# ITS-AGS: INFORMATION SECURITY STANDARDS

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## 1. Secure System Development Life Cycle Standard

ITS has defined a Secure Systems Development Lifecycle (SSDLC) based on the NIST framework. These SSDLC security requirements and tasks must be considered and addressed within every system, project or application and sufficiently documented to demonstrate the extent to which each security activity is applied.

At a minimum, a SSDLC must contain the following security activities:

1. Define Security Roles and Responsibilities
2. Orient Staff to the SDLC Security Tasks
3. Establish a System Criticality Level
4. Classify Information
5. Establish System Identity Assurance Level Requirements
6. Establish System Security Profile Objectives
7. Create a System Profile
8. Decompose the System
9. Assess Vulnerabilities and Threats
10. Assess Risks
11. Select and Document Security Controls
12. Create Test Data
13. Test Security Controls
14. Perform Certification and Accreditation
15. Manage and Control Change
16. Measure Security Compliance
17. Perform System Disposal

Additional information is found in policy *NYS-S13-001 Secure System Development Life Cycle*, see Table 1 in section 2.

## 2. New York State Information Technology Security Policies

Every system, project or application must comply with the New York State Information Technology Security Policies, published by the NYS Enterprise Information Security Office (EISO) at [its.ny.gov/eiso/policies/security](https://its.ny.gov/eiso/policies/security), that are applicable to it. These policies are listed in the table below.

Table 1

NYS-P03-002	<a href="#">Information Security Policy</a>
NYS-P10-006	<a href="#">Identity Assurance Policy</a>

NYS-P13-001	<a href="#">Information Security Exception Policy</a>
NYS-P14-001	<a href="#">Acceptable Use of Information Technology (IT) Resources Policy</a>
NYS-S10-001	<a href="#">CPE Requirements for ISOs/Designated Security Representatives Standard</a>
NYS-S13-001	<a href="#">Secure System Development Life Cycle (SSDLC) Standard</a>
NYS-S13-002	<a href="#">Secure Coding Standard</a>
NYS-S13-003	<a href="#">Sanitization/Secure Disposal Standard</a>
NYS-S13-004	<a href="#">Identity Assurance Standard</a>
NYS-S13-005	<a href="#">Cyber Incident Response Standard</a>
NYS-S14-001	<a href="#">Information Security Risk Management Standard</a>
NYS-S14-002	<a href="#">Information Classification Standard</a>
NYS-S14-003	<a href="#">Information Security Controls Standard</a>
NYS-S14-005	<a href="#">Security Logging Standard</a>
NYS-S14-006	<a href="#">Authentication Tokens Standard</a>
NYS-S14-007	<a href="#">Encryption Standard</a>
NYS-S14-008	<a href="#">Secure Configuration Standard</a>
NYS-S14-009	<a href="#">Mobile Device Security Standard</a>
NYS-S14-010	<a href="#">Remote Access Standard</a>
NYS-S14-013	<a href="#">Account Management / Access Control Standard</a>
NYS-S15-001	<a href="#">Patch Management Standard</a>
NYS-S15-002	<a href="#">Vulnerability Scanning Standard</a>
NYS-S15-003	<a href="#">Wireless Technology Standard</a>
NYS-G10-001	<a href="#">Secure Use of Social Media Guideline</a>

### 3. Information Security and Emergency Procedures

New York State considers the security and protection of State information to be a critical aspect of this engagement.

Contractor agrees to comply with the following requirements:

- Comply with all federal and state security policies in relation to providing services to ensure the confidentiality, integrity and availability (CIA) of NYS data.
- NYS follows NIST 800-53 guidelines for implementing system security and privacy controls. Vendors should also be aware of the FedRAMP program when implementing systems for NYS.
- Run NYS Enterprise Information Security Office (EISO) approved security scans specified in policy *NYS-S15-002 Vulnerability Scanning Standard* prior to the launch of any major changes to the [enter project name], as well as follow policy *NYS-S13-001 Secure System Development Life Cycle*.
- Undergo a data classification in conjunction with [enter agency name] to identify the criticality of the data being collected and stored.
- Share all vendor's third party audit reports with the State.
- Allow the State to verify implementation of recommendations resulting from the third party audits.
- In the event of a security breach, as defined by State Technology law Section 208, the Contractor shall act in accordance with New York State Breach Notification Law.
- Contractor is required to submit, as part of its overall security plan, a Protection and Risk Assessment Plan for the management of the State's confidential information. The Protection and Risk Assessment Plan is expected to include Contractor's technology- and non-technology-based process for securing the State's confidential information. At a minimum, the Protection and Risk Assessment Plan must address the areas listed below.
  - Ensuring and certifying that employees, subcontractors, and business partners are aware of and comply with NYS information security and confidentiality requirements.
  - Documentation to detail the extent to which each security activity listed in section 1. *Secure System Development Life Cycle Standard* is followed.
  - Security reviews and audits, including third-party reviews, audits, and facility audits.
  - Use of security tools and standards (e.g., security software, encryption standards, etc.).

- Maintaining and enhancing the bidder's information security environment and business practices with procedures and policies for a security environment aligning with industry best practices.

Contractor is expected to provide copies of Continuity of Operations Plan (COOP) and Disaster Recovery Plan (DRP) plans for all data, records, forms, and data processing operations associated with [enter project name]. **The following areas should be addressed as part of the security documentation:**

- Establish procedures to ensure its data processing system will be back in at least minimal operation within [insert time constraint].
- Ensure complete, accurate and up-to-date documentation of all systems and procedures used to operate [enter project name]. This documentation shall include a back-up copy stored encrypted, where appropriate, off premises (New York State data should not reside outside of the continental United States).
- Redundant architectures, based on the criticality of data, e.g. Tier III data center; regular file back-ups; and continuous 24-hour monitoring required for hosted environments.
- Provide recovery procedure training for all personnel and refresher training at least annually.

## 4. Cloud Security Requirements

If cloud based services are a component of the solution or services to be provided by Contractor, Contractor must comply with FedRAMP (<https://www.fedramp.gov>) standards for cloud services, and other applicable federal and New York State laws, regulations and requirements.

**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.

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**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 I.A - Proposal Submission Requirement Checklist

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Please indicate by checkmark that your Proposal meets **each** of the following submission requirements:

- \_\_\_ 1. **TIMELY SUBMISSION:** Proposal submitted to assure receipt by the Department no later than 3:00 p.m. ET on the Proposal Due Date as indicated in RFP Section II.A.1.
- \_\_\_ 2. **FORMATTING REQUIREMENTS:** The Offeror's Proposal must be organized in three parts: Administrative Proposal; Technical Proposal and Cost Proposal and each part must each comply with the formatting requirements stated in Section II.A.7.a and II.A.7.b of this RFP.
- \_\_\_ a. Twelve (12) separately bound hardcopies – **two (2) Originals each of the Administrative Proposal, Technical Proposal and Cost Proposal** containing original documents (i.e., original signatures, no photocopies) and marked and numbered (i.e., "ORIGINAL #1" and "ORIGINAL #2."), **Ten (10) copies of each Administrative Proposal, Technical Proposal and Cost Proposal** marked and numbered (i.e., "COPY #1," "COPY #2," etc.) and a separate CD for the Administrative, Technical and Cost Proposals.
  - \_\_\_ b. Proposals must be prepared in Adobe Acrobat.
  - \_\_\_ c. Each Administrative, Technical and Cost Proposal must be separately bound and clearly labeled with "New York State Dispute Resolution Program #DRP-2016-1" and Offeror's name(s).
  - \_\_\_ d. Table of Contents
  - \_\_\_ e. Index Tabs
  - \_\_\_ f. Pagination
  - \_\_\_ g. Updates/Corrections
  - \_\_\_ h. Required Content of Proposals - The Proposal shall consist of three parts: the Administrative Proposal must contain the documentation required in Section III of this RFP. The Technical Proposal must be responsive to the programmatic duties and responsibilities set forth in Section IV of this RFP. The Cost Proposal must demonstrate a commitment to perform all programmatic duties and responsibilities in accordance with Section V of this RFP.
- \_\_\_ 3. **REQUIRED CONTENT OF THE ADMINISTRATIVE PROPOSAL:** The Administrative Proposal must contain the following information, in the order enumerated below:
- \_\_\_ A. **Formal Offeror Letter:** The Offeror must submit a formal offer in the form of the "Formal Offer Letter" as set forth in RFP, Exhibit I.S in accordance with the requirements set forth in RFP, Section III.A
  - \_\_\_ B. **Minimum Mandatory Requirements:** The Offeror must submit a completed Exhibit I.T "Offeror Attestations Form" containing the representations and warranties set forth therein.
  - \_\_\_ C. **Exhibits:** The Offeror must complete and submit the Exhibits specified in Section III.C as follows:
    - \_\_\_ Exhibit I.A Proposal Submission Requirement Checklist
    - \_\_\_ Exhibit I.D MacBride Statement and Non-Collusive Bidding Certification
    - \_\_\_ Exhibit I.G EEO Staffing Plan (form EEO-100)
    - \_\_\_ Exhibit I.K Offeror's Affirmation of Understanding & Agreement
    - \_\_\_ Exhibit I.M Compliance with Public Officers Law Requirements
    - \_\_\_ Exhibit I.N Compliance with Americans with Disabilities Act
    - \_\_\_ Exhibit I.O MWBE Utilization Plan (form MWBE-100)
    - \_\_\_ Exhibit I.P Offeror's Certification of Compliance Pursuant to State Finance Law §139-k

## Exhibit I.A - Proposal Submission Requirement Checklist

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- \_\_\_ Exhibit I.Q MWBE and EEO Policy Statement
- \_\_\_ Exhibit I.U.1 Key Subcontractors or Affiliates
- \_\_\_ Exhibit I.U.2 NYS Supplier & Subcontractor
- \_\_\_ Exhibit I.W Compliance with NYS Workers' Compensation Law
- \_\_\_ Exhibit I.X Extraneous Terms (if proposing)

- \_\_\_ D. **Key Subcontractors:** The Offeror must provide a statement identifying all Key Subcontractors, if any, that the Offeror will be contracting with to provide program services and must, for each such Key Subcontractor identified, complete and submit **Exhibit I.U.1 "Key Subcontractors"**:
1. provide a brief description of the services to be provided by the Key Subcontractor; and
  2. provide a description of any current relationships with such Key Subcontractor and the clients/projects that the Offeror and Key Subcontractor are currently servicing under a formal legal agreement or arrangement, the date when such services began and the status of the project.
- The Offeror must indicate whether or not, as of the date of the Offeror's Proposal, a subcontract has been executed between the Offeror and the Key Subcontractor for services to be provided by the Key Subcontractor relating to this RFP. If the Offeror will not be subcontracting with any Key Subcontractor(s) to provide program services, the Offeror must provide a statement to that effect.
- \_\_\_ E. **Reference Checks:** The Offeror must list two (2) references of current clients and one (1) reference of a former client for a total of three (3) references for which the Offeror has supplied Dispute Resolution Program Services similar to those required in this RFP. If the Offeror has no former clients to include as references, the Offeror must include a statement attesting to that fact. Otherwise, the Offeror must include, at minimum, one (1) former client as a reference for which the Offeror has supplied services similar in nature to those required in this RFP. If the Offeror is proposing any Key Subcontractors or Affiliates, the references should be with clients for whom the Offeror and Key Subcontractor or Affiliate have jointly supplied services similar to those described in this RFP. For each Reference provided the Offeror must complete and submit Exhibit I.V, entitled "Program References." The Offeror shall be solely responsible for providing contact names and phone numbers that are readily available to be contacted by the State. The Offeror must also indicate what participation, if any, the Program manager and each key staff person proposed for this Program had in the referenced services.
- \_\_\_ F. **Financial Statements:** The Offeror must provide a copy of the Offeror's last issued GAAP annual audited financial statement. A complete set of statements, not just excerpts, must be provided. Additionally, for each Key Subcontractor or Affiliate, if any, that provides any of the Program Services; provide the most recent GAAP annual audited statement. If the Offeror, or a Key Subcontractor or Affiliate, is a privately held business and is unwilling to provide copies of their GAAP annual audited financial statements as part of their Proposal, the Offeror/Key Subcontractor/Affiliate must make arrangements for the procurement evaluation team to review the financial statements. **Note:** If financial statements have not been prepared and/or audited, the Offeror/Key Subcontractor/Affiliate must provide the following as part of its Administrative Section a letter from a bank reference attesting to the Offeror/Key Subcontractor/Affiliate's financial viability and creditworthiness. (Note: for purposes of this reference, the Offeror may not give as a reference, a parent or subsidiary company, a partner or an affiliate

## Exhibit I.A - Proposal Submission Requirement Checklist

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organization.) The letter must include the bank's name, address, contact person name and telephone number and it must address, at a minimum, the following items:

1. a brief description of the business relationship between the parties (i.e., the Offeror/Key Subcontractor/Affiliate and the bank), including the duration of the relationship and the Offeror's current standing with the bank. For example: "*The (Offeror/Key Subcontractor/Affiliate's name) is currently and has been for "x" number of years a client in good standing;*"
2. a description of any ownership/partner relationship that may exist between the parties, if any. (Note: One party cannot be the parent, partner or subsidiary of the other, nor can one party be an affiliate of the other.); and,
3. any other facts or conclusions the bank may deem relevant to the State in regard to the bank's assessment of the Offeror/Key Subcontractor/Affiliate's financial viability and creditworthiness concerning the nature and scope of the Program Services, which are the subject matter of this RFP, and the parties (i.e., DCS and the Offeror or the Offeror and Key Subcontractor of Affiliate) contractual obligations should the Offeror be awarded the resultant contract.

     G. **Vendor Responsibility Questionnaire:** The Offeror must complete and execute a NYS Vendor Responsibility Questionnaire for itself and all Key Subcontractors.

1. If the Offeror or Key Subcontractor, if any, is incorporated outside the State of New York, a recent certificate of Good Standing must be submitted for each.
2. If the Offeror or Key Subcontractor, if any, has any employees in NYS, a confirmation of NYC's Worker's Compensation and NYS Disability coverage must be submitted for each.

4. **REQUIRED CONTENT OF THE TECHNICAL PROPOSAL:** The Technical Proposal shall be responsive to the duties and responsibilities and submission requirements set forth in Section IV of this RFP and it shall contain the following information, in accordance with the submissions associated requirements, and in the order enumerated below:

### Technical Proposal Submission Requirements

     A. **Program Administration**

1. Executive Summary
2. General Qualifications

     B. **Program Services**

1. Account Team & Exhibit I.B
2. Implementation Plan
3. Reviewing Physician Network
4. Program Communications
5. Maintenance of Confidential Employee Records
6. Reporting
7. Transition and Termination of Contract

## Exhibit I.A - Proposal Submission Requirement Checklist

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5. **REQUIRED CONTENT OF THE COST PROPOSAL:** The Offeror's Cost Proposal shall demonstrate that it will execute the duties and responsibilities set forth in Section V of this RFP and it shall contain the following information, in accordance with the submissions associated requirements below:
- \_\_\_A. Exhibit IV Dispute Resolution Program Cost
6. **REQUESTED REDACTIONS CD and HARD COPY:** The FOIL-related materials described herein which the Offeror is requested to provide per RFP, Section II.B.8 will not be considered part of the Offeror's Proposal and will not be reviewed as a part of the Procurement's evaluation process. Notwithstanding this they have been identified in this Checklist as a reminder to Offerors of the need to provide the requested items.

At the time of Proposal submission the Offeror is requested to submit:

- \_\_\_A. Exhibit I.C Freedom of Information Law – Request for Redaction Chart
- \_\_\_B. Separately bound hardcopy of the Administrative Proposal, Technical Proposal, and Cost Proposal with each specific item requested to be protected from FOIL disclosure by highlighting in yellow.
- \_\_\_C. Electronic copy (on CD in Adobe Acrobat Professional software, version 8 or higher) of the complete Proposal noting each the specific item requested to be protected from FOIL which contains no more than three PDF files; one for each part of the Proposal (Administrative Proposal, Technical Proposal, and Cost Proposal).



**Exhibit I.B - BIOGRAPHICAL SKETCH FORM**

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**INSTRUCTION: Prepare this form for each key staff individual, including subcontractor provided key staff, if any.**

**Name:** \_\_\_\_\_

**Job Title:** \_\_\_\_\_

**Relationship to Project:** \_\_\_\_\_

**EDUCATION**

<u>Institution &amp; Location</u>	<u>Degree</u>	<u>Year Conferred</u>	<u>Discipline</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**PROFESSIONAL EMPLOYMENT** (Start with most recent.)

<u>Dates From - To</u>	<u>Employer</u>	<u>Title</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

**PROFESSIONAL EXPERIENCE** (Significant experience/education relevant to program)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Exhibit I.C - Freedom of Information Law – Request for Redaction Chart**

\_\_\_\_\_  
 (Name of Company) Proposal Dated \_\_\_\_\_

In Response to the Request for Proposals entitled **Dispute Resolution Program # DRP-2016-1.**

- Offeror asserts that the information noted in the table below constitutes proprietary and/or trade secret information and desires that such information not be disclosed if requested pursuant to the New York State Freedom of Information Law, Article 6 of the Public Officers Law.
- Offeror makes **NO** assertion that any information in its Proposal, in whole or in part, should be protected from FOIL disclosure.

<b>Administrative Proposal:</b>		
<b>Requested Redaction Page #'s and Proposal Sections or</b>	<b>Description</b>	<b>Offeror Rationale for Proposed Redaction</b>
<i>Insert rows above as necessary</i>		
<b>Technical Proposal:</b>		
<b>Requested Redaction Page #'s and Proposal Sections or</b>	<b>Description</b>	<b>Offeror Rationale for Proposed Redaction</b>
<i>Insert rows above as necessary</i>		
<b>Cost Proposal:</b>		
<b>Requested Redaction Page #'s and Proposal Sections or</b>	<b>Description</b>	<b>Offeror Rationale for Proposed Redaction</b>
<i>Insert rows above as necessary</i>		

**REDACTION CHART**

Please provide specific justification for each item for which you seek protection from FOIL disclosure. An appropriate justification may any one or more of the following considerations by which to demonstrate reasonably whether the item for which you seek protection may be excepted from disclosure:

- a) the confidential nature of the specific item, including a description of the nature and extent of the injury to the Offeror's competitive position, such as unfair economic or competitive damage, which would be incurred were the information/record to be disclosed;
- b) whether the specific information/record is treated as confidential by the Offeror, including whether it ever has been made available to any person or entity;
- c) whether any patent, copyright, or similar legal protection exists for the specific item of information;
- d) whether the public disclosure of the information/record is otherwise restricted by law, and the specific source and content of such restriction;
- e) the date upon which the information/record no longer will need to be kept confidential, if applicable;
- f) whether the item of information is known by anyone outside the Offeror's business or organization;
- g) the extent to which the information is known by Offeror's employees and others involved in the Offeror's business;
- h) the value of the specific information/record to the Offeror and to its competitors;
- i) the amount of effort or money expended by the Offeror in developing the information/record; and
- j) the ease or difficulty with which the information could be properly acquired or duplicated (not merely copied) for use by others.

**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 \_\_\_\_\_

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: \_\_\_\_\_

\_\_\_\_\_  
*Signature*

PRINT:

SIGNATORY'S NAME \_\_\_\_\_ TITLE \_\_\_\_\_

**INDIVIDUAL, CORPORATE OR PARTNERSHIP ACKNOWLEDGMENT**

STATE OF                            }  
  :  
COUNTY OF                        } **SS.:**

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_, before me personally appeared:

\_\_\_\_\_, 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 \_\_\_\_\_, Town of

\_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_; and further that, if applicable:

**[Check One, If Applicable]**

( \_\_\_ **If a corporation**): \_he is the \_\_\_\_\_ of \_\_\_\_\_, 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**



New York State Department of Taxation and Finance

**Contractor Certification to Covered Agency**  
 (Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

**ST-220-CA**  
 (6/06)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need Help? on back*).

Contractor name		For covered agency use only Contract number or description	
Contractor's principal place of business	City	State	ZIP code
Contractor's mailing address (if different than above)		Estimated contract value over the full term of contract (but not including renewals)	
Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)		\$
Contractor's telephone number	Covered agency name		
Covered agency address		Covered agency telephone number	

I, \_\_\_\_\_, hereby affirm, under penalty of perjury, that I am \_\_\_\_\_

*(name)* *(title)*

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:

(Mark an X in only one box)

- The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.
- The contractor has previously filed Form ST-220-TD with the Tax Department in connection with \_\_\_\_\_  
(insert contract number or description)  
 and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_  
(sign before a notary public) (title)

**Instructions**

**General information**

Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, *Contractor Certification to Covered Agency*, with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. This publication is available on our Web site, by fax, or by mail. (See *Need help?* for more information on how to obtain this publication.) In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed. If you have questions, please call our information center at 1 800 698-2931.

**Note:** Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

**When to complete this form**

As set forth in Publication 223, a contract is subject to section 5-a, and you must make the required certification(s), if:

- i. The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);
- ii. The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and
- iii. The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of \$100,000 and (b) is a contract for *commodities or services*, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned on or after April 26, 2006 (the effective date of the section 5-a amendments).

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

On the \_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_, before me personally appeared \_\_\_\_\_,
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 \_\_\_\_\_,
Town of \_\_\_\_\_,
County of \_\_\_\_\_,
State of \_\_\_\_\_; and further that:

[Mark an X in the appropriate box and complete the accompanying statement.]

- (If an individual): \_he executed the foregoing instrument in his/her name and on his/her own behalf.
(If a corporation): \_he is the \_\_\_\_\_ of \_\_\_\_\_, 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 a \_\_\_\_\_ 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 purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
(If a limited liability company): \_he is a duly authorized member of \_\_\_\_\_, LLC, the limited liability company described in said instrument; that \_he is authorized to execute the foregoing instrument on behalf of the limited liability company 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 limited liability company as the act and deed of said limited liability company.

Notary Public
Registration No.

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).
This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.
Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.
Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.
This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

Need help?
Internet access: www.nystax.gov (for information, forms, and publications)
Fax-on-demand forms: 1 800 749-3676
Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday. 1 800 698-2931
To order forms and publications: 1 800 462-8100
From areas outside the U.S. and outside Canada: (518) 485-6800
Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110
Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.



**Contractor Certification**

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a (see Need help? below)*.

Contractor name				
Contractor's principal place of business		City	State	ZIP code
Contractor's mailing address (if different than above)				
Contractor's federal employer identification number (EIN)		Contractor's sales tax ID number (if different from contractor's EIN)		Contractor's telephone number ( )
Covered agency or state agency	Contract number or description		Estimated contract value over the full term of contract (but not including renewals) \$	
Covered agency address			Covered agency telephone number	

**General information**

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded certain state contracts valued at more than \$100,000 to certify to the Tax Department that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specified period. In addition, contractors must certify to the Tax Department that each affiliate and subcontractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also file a Form ST-220-CA, certifying to the procuring state entity that they filed Form ST-220-TD with the Tax Department and that the information contained on Form ST-220-TD is correct and complete as of the date they file Form ST-220-CA.

All sections must be completed including all fields on the top of this page, all sections on page 2, Schedule A on page 3, if applicable, and Individual, Corporation, Partnership, or LLC Acknowledgement on page 4. If you do not complete these areas, the form will be returned to you for completion.

For more detailed information regarding this form and section 5-a of the Tax Law, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a, (as amended, effective April 26, 2006)*, available at [www.nystax.gov](http://www.nystax.gov). Information is also available by calling the Tax Department's Contractor Information Center at 1 800 698-2931.

**Note:** Form ST-220-TD must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 4 of this form must be completed before a notary public.

Mail completed form to:

**NYS TAX DEPARTMENT  
DATA ENTRY SECTION  
W A HARRIMAN CAMPUS  
ALBANY NY 12227**

**Privacy notification**

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).





This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227.

**Need help?**

	<b>Internet access:</b> <a href="http://www.nystax.gov">www.nystax.gov</a> (for information, forms, and publications)	
	<b>Fax-on-demand forms:</b>	1 800 748-3676
	<b>Telephone assistance</b> is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday.	
	To order forms and publications:	1 800 462-8100
	<b>Sales Tax</b> Information Center:	1 800 698-2909
	From areas outside the U.S. and outside Canada:	(518) 485-6800
	<b>Hearing and speech impaired</b> (telecommunications device for the deaf (TDD) callers only):	1 800 634-2110
	<b>Persons with disabilities:</b> In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.	



I, \_\_\_\_\_, hereby affirm, under penalty of perjury, that I am \_\_\_\_\_  
*(name)* *(title)*  
of the above-named contractor, and that I am authorized to make this certification on behalf of such contractor.

**Complete Sections 1, 2, and 3 below. Make only one entry in each section.**

**Section 1 — Contractor registration status**

- The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made. The contractor is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law, and is listed on Schedule A of this certification.
- The contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

**Section 2 — Affiliate registration status**

- The contractor does not have any affiliates.
- To the best of the contractor's knowledge, the contractor has one or more affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more affiliates, and each affiliate has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

**Section 3 — Subcontractor registration status**

- The contractor does not have any subcontractors.
- To the best of the contractor's knowledge, the contractor has one or more subcontractors having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more subcontractors, and each subcontractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Sworn to this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_  
*(sign before a notary public)*

\_\_\_\_\_  
*(title)*

### Schedule A — Listing of each entity (contractor, affiliate, or subcontractor) exceeding \$300,000 cumulative sales threshold

List the contractor, or affiliate, or subcontractor in Schedule A only if such entity exceeded the \$300,000 cumulative sales threshold during the specified sales tax quarters. See directions below. For more information, see Publication 223.

A Relationship to Contractor	B Name	C Address	D Federal ID Number	E Sales Tax ID Number	F Registration in progress

Column A – Enter **C** in column A if the contractor; **A** if an affiliate of the contractor; or **S** if a subcontractor.

Column B – Name - If the entity is a corporation or limited liability company, enter the exact legal name as registered with the NY Department of State, if applicable. If the entity is a partnership or sole proprietor, enter the name of the partnership and each partner's given name, or the given name(s) of the owner(s), as applicable. If the entity has a different DBA (doing business as) name, enter that name as well.

Column C – Address - Enter the street address of the entity's principal place of business. Do not enter a PO box.

Column D – ID number - Enter the federal employer identification number (EIN) assigned to the entity. If the entity is an individual, enter the social security number of that person.

Column E – Sales tax ID number - Enter only if different from federal EIN in column D.

Column F – If applicable, enter an X if the entity has submitted Form DTF-17 to the Tax Department but has not received its certificate of authority as of the date of this certification.

**Individual, Corporation, Partnership, or LLC Acknowledgment**

STATE OF                    }  
                                  :                    SS.:  
COUNTY OF                }

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me personally appeared \_\_\_\_\_, 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 \_\_\_\_\_,  
Town of \_\_\_\_\_,  
County of \_\_\_\_\_,  
State of \_\_\_\_\_; and further that:

[Mark an X in the appropriate box and complete the accompanying statement.]

- (If an individual): \_he executed the foregoing instrument in his/her name and on his/her own behalf.
- (If a corporation): \_he is the \_\_\_\_\_ of \_\_\_\_\_, 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 a \_\_\_\_\_ 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 purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
- (If a limited liability company): \_he is a duly authorized member of \_\_\_\_\_ LLC, the limited liability company described in said instrument; that \_he is authorized to execute the foregoing instrument on behalf of the limited liability company 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 limited liability company as the act and deed of said limited liability company.

\_\_\_\_\_  
Notary Public

Registration No. \_\_\_\_\_



**Department of Civil Service**

ALBANY, NEW YORK 12239

**EQUAL EMPLOYMENT OPPORTUNITY STAFFING PLAN**

OFFICE OF FINANCIAL ADMINISTRATION

EEO-100 (1/2016)

Solicitation No.:	Reporting Entity: <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor	Report includes: <input type="checkbox"/> Contractor's work force to be utilized on this contract <input type="checkbox"/> Contractor's total work force <input type="checkbox"/> Subcontractor's work force to be utilized on this contract <input type="checkbox"/> Subcontractor's total work force
Contractor/Subcontractor's Name:		
Contractor/Subcontractor's Address:		
FEIN:		

**Enter the total number of employees in each classification in each of the EEO-Job Categories identified.**

EEO Job Categories	Total Work Force	Work force by Gender		Work force by Race/Ethnic Identification								Disabled Individual		Veteran				
		Total Male (M)	Total Female (F)	White (M) (F)		Black (M) (F)		Hispanic (M) (F)		Asian (M) (F)		American Indian or Alaskan Native (M) (F)		(M)	(F)	(M)	(F)	
Executive/Senior level Officials & Managers																		
First/Mid level officials & Managers																		
Professionals																		
Technicians																		
Sales Workers																		
Administrative Support Workers																		
Craft Workers																		
Operatives																		
Laborers and Helpers																		
Service Workers																		
Totals																		

<b>PREPARED BY (Signature):</b>  	<b>TELEPHONE NO.:</b>  <b>EMAIL ADDRESS:</b>	<b>DATE:</b>
<b>NAME AND TITLE OF PREPARER (Print or Type):</b>		

**General Instructions:** All Offerors must complete an EEO Staffing Plan (EEO 100) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's total work force, the Offeror shall complete this form for the contractor's total work force. Subcontractors awarded a subcontract over \$25,000 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 must complete this form upon request of the Department.

**Instructions for completing:**

1. Enter the Solicitation Number that this report applies to along with the name and address of the Offeror (contractor).
2. Check off the appropriate box to indicate if the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate if the contractor's/subcontractor's work force being reported is just for the contract or the total work force.
4. Enter the total work force by EEO job category.
5. Break down the total work force by gender and enter under the heading "Work force by Gender."
6. Break down the total work force by race/ethnic background and enter under the heading "Work force by Race/Ethnic Identification."
7. Enter information on any disabled or veteran employees included in the work force under the appropriate heading.
8. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

**RACE/ETHNIC IDENTIFICATION**

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

**WHITE:** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.

**BLACK:** A person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.

**HISPANIC:** A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

**ASIAN & PACIFIC ISLANDER:** A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

**AMERICAN INDIAN OR ALASKAN NATIVE (Not of Hispanic Origin):** A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

**DISABLED INDIVIDUAL** - any person who:

- has a physical or mental impairment that substantially limits one or more major life activity
- has a record of such an impairment; or
- is regarded as having such an impairment.

**VIETNAM ERA VETERAN:** A veteran who served at any time between and including January 1, 1963 and May 7, 1975.

## **Exhibit I.H - NYS Department of Civil Service Debriefing Guidelines**

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NYS State Finance Law §163(9)(c), as amended by Section 3 of Chapter 137 of the Laws of 2008, requires that:

*“A state agency shall, upon request, provide a debriefing to any unsuccessful offerer<sup>1</sup> that responded to a request for proposal or an invitation for bids, regarding the reasons that the proposal or bid submitted by the unsuccessful offerer was not selected for an award. The opportunity for an unsuccessful offerer to seek a debriefing shall be stated in the solicitation, which shall provide a reasonable time for requesting a debriefing.”*

The Procurement Council Guidelines define “Debriefing” as:

*The practice whereby, upon the request of a bidder, the state agency advises such bidder of the reasons why its bid was not selected for an award. It is viewed as a learning process for the bidder to be better prepared to participate in future procurements.*

In accordance with the law, the Department shall make a Debriefing available to any entity that submitted a proposal or bid in response to a given solicitation (“Offeror”), including the selected Offeror after notice award is made by the Department. All Offerors shall be given written notice of award, via email with hardcopy to follow.

### **Timeframes associated with requesting/conducting Debriefings:**

Debriefing must be requested by Offerors in writing to the designated individual or email address as set forth in the notice of award.

- **Pre-Award Debriefings:**  
Any Offeror, upon request, will be afforded an opportunity for a pre-award Debriefing at least five business days prior to the date by which any protest must be filed. An Offeror’s failure to timely request a pre-award Debriefing shall not cause an extension of the time period within which a protest must be filed. In those cases where the Offeror fails to make a timely request for a pre-award Debriefing, the Department will schedule the Debriefing as soon after the time the request is made as it deems practicable.
- **Post-Award Debriefings:**  
In the case of requests made by an Offeror(s) for a post-award Debriefing, the request must be received by the Department not more than twenty calendar days after final approval of the contract is received or the date the award is posted on OSC’ website at the address set forth below and the Department will schedule the Debriefing as soon after the time the request is made as it deems practicable.

<http://www1.osc.state.ny.us/transparency/contracts/contractsearch.cfm>

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<sup>1</sup> For purposes of this policy, the terms Offeror, Offerer and Bidder are understood to have same meaning.

### **How Debriefings shall be conducted by the Department:**

A Debriefing may be requested by any unsuccessful Offeror after a contract award is made regarding the reasons that the proposal or bid submitted by the unsuccessful Offeror was not selected for award. While a Debriefing is typically conducted in person, it may be conducted by video conference, over the phone, or through written summaries, if agreed to by the Offeror.

Since Debriefings are intended to make the procurement process open and transparent and to help the vendor community become more viable competitors for New York State goods and services, when conducting a Debriefing, the Department will, at a minimum, discuss the strengths and weaknesses of the Offeror's proposal and provide information as to the relative rating of the Offeror's proposal in each of the major evaluation categories as provided for in the solicitation document. Typically such a debriefing will include information as to the rating of the Offeror's proposal in both the technical and cost components of the evaluation and an identification of any areas in the proposal deemed deficient. The Department will not provide any documents/materials at a Debriefing as their release is subject to NYS FOIL laws.

During a **pre-award** Debriefing, the Department:

- will limit the discussion to the reasons why the Offeror's proposal/bid was unsuccessful;
- will not provide information concerning any other Offerors' proposals, including the winning proposal; will not discuss any other aspects of the Procurement Record, including but not limited to the detailed scoring and evaluation criteria as such information is subject to NYS FOIL laws; and
- may, but is not required to, offer general advice and guidance to the Offeror for the Offeror's consideration as regards future bidding opportunities.

During a **post-award** Debriefing, the Department:

- will provide information as to the reasons why the Offeror's proposal/bid was unsuccessful;
- will provide information concerning the other Offerors' proposals, including the winning proposal, but only in the context of the bid evaluation scoring;
- will not discuss specific details of other Offerors' proposals, including their individual strengths and weakness as such information is subject to NYS FOIL laws
- will not discuss any other aspects of the Procurement Record, including but not limited to the detailed scoring and evaluation criteria as such information is subject to NYS FOIL laws and
- may offer advice and guidance to the Offeror for the Offeror's consideration as regards future bidding opportunities, including those services which were the subject matter of the procurement.

### **General:**

- ✓ The Department will schedule the same amount of time for each Offeror who requests a debriefing.
- ✓ Debriefing will not be scheduled for more than one hour.
- ✓ Debriefings will be held individually with a requesting Offeror.
- ✓ The Department's Designated Agency Contact (i.e., the Procurement Manager) is the sole person authorized to schedule a Debriefing.
- ✓ The Offeror must provide a list of intended attendees prior to the Debriefing, including their titles or relationship to the Offeror and notify the Department if the Offeror is intending to bring legal counsel, so that the Department can notify agency legal counsel.

## Exhibit I.H - NYS Department of Civil Service Debriefing Guidelines

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- ✓ At a minimum at least two agency employees must be present at each Debriefing.
- ✓ Debriefings will not be taped or transcribed by the Department, and Offerors are prohibited from taping the Debriefing.
- ✓ Any discussion of a proposal's strengths and weaknesses will relate to scoring of that bid submission against the RFP requirements, not against a competitor's proposal. The Department will not discuss the relative merits of one Offeror's submission against its competitors as that is not how proposals are evaluated and scored.
- ✓ Requests for copies of documents made by an Offeror at the Debriefing must be handled in accordance with the Department's FOIL procedures.

April 2011



This Exhibit has been intentionally  
left blank

**Exhibit I.J – Notice of Bidding Intention Form**

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**NYS Department of Civil Service  
RFP No. DRP-2016-1  
entitled  
“Dispute Resolution Program”**

Notice of Bidding Intention Form

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(Please PRINT Firm's Name Above)

With regard to this RFP, (check one of the following boxes applicable):

- We **ARE INTERESTED & MAY** submit a bid response.
- We **ARE NOT INTERESTED & WILL NOT** be submitting a bid response because:

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---

Name of Contact at Firm

---

Title

---

Email Address

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\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Date

Complete the tables above and submit it to the Dispute Resolution Program Procurement Manager specified in this RFP, Section II.A.2.b. The completed table may be emailed, faxed and/or mailed (see addresses provided in this RFP, Section II.A.2.b.).

## **Exhibit I.K – Offeror’s Affirmation of Understanding and Agreement**

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Part 1 of this Exhibit I.K, as contained on the following page, should be completed by the Offeror and emailed, faxed and/or mailed to the Dispute Resolution Procurement Manager as set forth in RFP, Section II.A.2.b.

Part 2 of this Exhibit I.K should, prior to initiating any contact with the Department, be completed for each Offeror officer, employee, agent or consultant retained, employed or designated, by or on behalf of the Offeror to appear before or contact the Department in regards to this Procurement and submit it to the Dispute Resolution Manager specified in this RFP, Section II.A.2.b.

**Part 1**

Offeror’s Affirmation of Understanding and Agreement

**Instructions:**

Pursuant to State Finance Law §§139-j and 139-k, this solicitation imposes certain procurement lobbying limitations. Offerors are restricted from making contacts during the procurement’s “Restricted Period” (from the earliest written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from Offerors intending to result in a procurement contract with a governmental entity and ending with the final contract award and approval by the governmental entity and, where applicable, approval by the State Comptroller) to other than designated staff, unless the contact falls within certain statutory exceptions (“permissible contacts”). the Department’s employees are required to obtain certain information from Offerors and others whenever there is a contact about the procurement during the Restricted Period, and are required to make a determination of the Offeror’s responsibility that addresses the Offeror’s compliance with the statutes’ requirements. Findings of non-responsibility result in rejection for contract award, and if an Offeror is subject to two non-responsibility findings within four years the Offeror also will be determined ineligible to submit a proposal on or be awarded a contract for four years from the date of the second non-responsibility finding.

Further information about these requirements can be found at:

<http://www.ogs.ny.gov/aboutOGS/regulations/defaultAdvisoryCouncil.html>.

As a prerequisite for participating in this procurement, an Offeror must provide the following Affirmation of Understanding and Agreement to comply with these procurement lobbying restrictions in accordance with State Finance Law §§139-j and 139-k.

<b>Offeror Affirmation and Agreement</b>	
The Offeror affirms that it understands the procurement lobbying requirements set forth in State Finance Law §§139-j and 139-k, and agrees to comply with the Department’s procedures regarding permissible contacts as required thereby.	
Name of Offeror:	<input type="text"/>
By:	<input type="text"/>
	(Signature)
Name:	<input type="text"/>
Title:	<input type="text"/>
Address:	<input type="text"/>
	<input type="text"/>
Date:	<input type="text"/>

**Exhibit I.K – Offeror’s Affirmation of Understanding and Agreement**

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**Part 2**

<b>Offeror Designated Contact</b>	
<b>First Name</b>	
<b>Last Name</b>	
<b>Company Name</b>	
<b>Company Address:</b>	
<b>Street Address</b>	
<b>City</b>	
<b>State</b>	
<b>Zip</b>	
<b>Individual's Business Telephone # (xxx) xxx-xxxx</b>	
<b>Principal Place of Business (1)</b>	
<b>Individual's Occupation</b>	

*(1) Enter the location of the individual's Principal Place of Business (e.g. Albany, NY)*

Complete the table above for each Offeror officer, employee, agent or consultant retained, employed or designated, by or on behalf of the Offeror to appear before or contact the Department in regards to this Procurement, prior to the individual initiating any contact with the Department, and submit it to the Dispute Resolution Procurement Manager specified in Section II.A.2.b. of this RFP.



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

ADMINISTRATION DIVISION

Procurement Lobbying Policy: Restrictions  
on Contacts During the Procurement Process

Policy on Restrictions on Contacts During the Procurement Process  
Procurement Lobbying, Ch.4, L. 2010 State Finance Law (SFL)  
Sections 139-j and 139-k

I. Definitions

For the purpose of this policy as it regards RFP #DRP -2016-1, the following definitions apply:

"Article of procurement" means a commodity, service, technology, public work, construction, revenue contract, the purchase, sale or lease of real property or an acquisition or granting of other interest in real property that is the subject of a Department governmental procurement.

"Contacts" means any oral, written, or electronic communication with DCS or any other State governmental entity under circumstances where a reasonable person would infer that the communication was intended to influence the governmental entity's conduct or decision regarding the governmental procurement. However, any communications received by the Department from members of the State legislature or legislative staff, when acting in his or her official capacity, shall not be considered to be a "contact" and shall not be recorded by the Department's staff pursuant to this policy.

"Procurement Contract" means any contract or other agreement, including an amendment, extension, renewal, or change order to an existing contract (other than amendments, extensions, renewals, or change orders that are authorized and payable under the terms of the contract as it was finally awarded or approved by the comptroller, as applicable), for an article of procurement involving an estimated annualized expenditure in excess of \$15,000. Grants, contracts entered into under SFL Article 11-B, and intergovernmental agreements shall not be deemed "procurement contracts" for the purpose of this policy.

"Governmental entity" means: (1) any department, board, bureau, commission, division, office, council, committee or officer of the state, whether permanent or temporary, including the Department; (2) each house of the state legislature; (3) the unified court system; (4) any public authority, public benefit corporation or commission created by or existing pursuant to the public authorities law; (5) any public authority or public benefit corporation, at least one of whose members is appointed by the governor or who serves as a member by virtue of holding a civil office of the state; (6) a municipal agency, as that term is defined in paragraph (ii) of subdivision (s) of section one-c of the legislative law; (7) a subsidiary or affiliate of such a public authority.

"Offeror" means any individual or entity, or any employee, agent, consultant, or person acting on behalf of such individual or entity, who contacts the Department or any other State governmental entity about a governmental procurement during that procurement's restricted period of such governmental procurement whether or not the caller has a financial interest in the outcome of the procurement; provided, however, that a governmental agency or its employees that communicates with the Department regarding a governmental procurement in the exercise of its oversight duties shall not be considered an Offeror. "Offeror" includes prospective Offerors prior to the due date for the submission of offers/bids in response to the solicitation document.

## **Exhibit I.L – Procurement Lobbying Policy**

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"Proposal" means any bid, quotation, offer or response to the Department's solicitation of submissions relating to procurement.

"Governmental procurement" means:

- a) the public announcement, public notice, or public communication to any potential vendor of a determination of need for a procurement, which shall include, but not be limited to, the public notification of the specifications, bid documents, request for proposals or evaluation criteria for a procurement contract;
- b) the solicitation for a procurement contract;
- c) the evaluation of a procurement contract;
- d) the award, approval, denial, or disapproval of a procurement contract; or
- e) the approval or denial of an assignment, amendment (other than amendments that are authorized and payable under the terms of the procurement contract as it was finally awarded or approved by the State Comptroller, as applicable), renewal or extension of a procurement contract, or any other material change in the procurement contract resulting in a financial benefit to the Offeror/Contractor.

"Restricted period" means the period of time commencing with the earliest written notice, advertisement or solicitation of a request for proposal, or invitation for bids, or solicitation of proposals, or any other method for soliciting a response from Offerors intending to result in a procurement contract, and ending with the final contract award and approval of the Department and, where applicable, the State Comptroller.

"Revenue contract" means any written agreement between the Department and an Offeror whereby the Department gives or grants a concession or a franchise.

### **II. Designated Contacts**

For each governmental procurement, the Department shall at the same time that a restricted period is imposed, designate, with regard to each governmental procurement, a person or person(s) who are knowledgeable about the procurement and who may be contacted by Offerors relating to the governmental procurement. Each Offeror who contacts the Department during procurement's restricted period is permitted to make permissible contacts only the person(s) designated by the Department for that purpose (i.e., Designated Contact). Such contacts must comply with the requirements established by SFL sections 139-j and 139-k, and with the requirements set forth by the Department in the solicitation document.

### **III. Offeror Affirmation of Understanding and Agreement to Comply**

As a threshold requirement to participating in a procurement, the Department shall require each Offeror to provide written affirmation of its understanding of and agreement to comply with the Department's policy and procedures relating to permissible contacts during the governmental procurement's restricted period. Such a written affirmation by an Offeror shall be deemed to apply to any amendments to a procurement submitted by the Department after an initial affirmation is received with an initial bid.

## **Exhibit I.L – Procurement Lobbying Policy**

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### **IV. Contact Documentation**

Upon any contact during the procurement's restricted period, the Department's staff shall obtain the name, address, telephone number, place of principal employment, and occupation of the person or organization making the contact, and also shall inquire whether the person or organization making the contact was the Offeror or was retained, employed, or designated by or on behalf of the Offeror to appear before or contact the Department about the procurement. All recorded contacts shall be recorded on the appropriate form(s) and included in the procurement record.

### **V. Non-responsibility Disclosure**

The Procuring Agencies' staff shall ensure that all solicitation documents require Offerors to disclose findings of non-responsibility made within the previous four years by any State governmental entity where such prior finding of non-responsibility was due to:

- a) a violation of the procurement lobbying requirements established at SFL section 139-j; or
- b) the intentional provision of false or incomplete information to a government entity.

### **VI. Non-responsibility Determination**

The failure of an Offeror to timely disclose accurate or complete information to the Department regarding the above shall be considered by the Department in their determination of the Offeror's responsibility. No procurement contract shall be awarded to any such Offeror, its subsidiaries, and any related or successor entity with substantially similar function, management, board of directors, officers and shareholders unless the Department finds that the award of the contract to that entity is necessary to protect public property or public health or safety, and that the entity is the only source capable of supplying the required article of procurement within the necessary timeframe, provided however, that the Department shall include in the procurement record a statement describing the basis for such finding.

### **VII. Contractor Certification**

A contract award subject to SFL sections 139-j and 139-k shall contain a certification by the successful Offeror that all information provided to the Department with respect to the procurement lobbying requirements established by those sections is complete, true and accurate.

Each contract shall contain a provision authorizing the Department to terminate such contract in the event such certification is found to be intentionally false or intentionally incomplete. The Department shall include in the procurement record a statement describing the basis for such termination.

Any employee of the Department who becomes aware that an Offeror has made an impermissible contact(s) during the procurement shall immediately notify the DCS Ethics Officer or the DCS Director of Internal Audit. If an Offeror violates these requirements with regard to permissible contacts at a governmental entity other than the Department, the employee of that entity who becomes aware of the violation shall notify that entity's Ethics Officer, Inspector General, if any, or other official of that entity responsible for reviewing or investigating such matters, who shall in turn notify the DCS Ethics Officer or the DCS Director of Internal Audit.



**VIII. DCS Review of Alleged Violations and the Imposition of Sanctions**

- a) If the DCS Ethics Officer or the DCS Director of Internal Audit receives notification of an allegation that an Offeror has made an impermissible contact during the procurement's restricted period as described above, the DCS Director of Internal Audit shall immediately investigate such allegation. If the position of Director of Internal Audit is vacant, the Ethics Officer shall conduct the investigation, or the Commissioner may appoint a designee to investigate the allegation. In no event shall the person conducting the investigation be someone who has participated in the preparation of the solicitation document, the evaluation of Proposals, or the selection decision.
- b) If the investigation indicates that sufficient cause exists to believe that the allegation is true, the Department shall give the Offeror reasonable notice that an investigation is ongoing and an opportunity to be heard in response to the allegation. At the Department's discretion, such opportunity to be heard may be provided by giving the Offeror the opportunity to meet with the Department staff conducting the investigation or by the Offeror's submission of a written statement, or both. The Offeror may, but need not, be represented by counsel during the investigation. Any and all issues concerning the manner in which the investigation process is conducted shall be determined solely by the Department staff conducting the investigation.
- c) If it is found that an Offeror has knowingly and willfully made an impermissible contact in violation of these requirements, then the Department staff making such findings shall report to the President of the Civil Service Commission related instances, if any, of any Department employee's violation of Public Officers Law sections 73(5) and 74.

**IX. Sanctions**

- a) A finding that an Offeror has knowingly and willfully made an impermissible contact shall result in a determination of non-responsibility for such Offeror. Concomitantly, such Offeror and its subsidiaries, and any related or successor entity with substantially similar function, management, board of directors, officers and shareholders, shall not be awarded the procurement contract, unless the Department finds that the award of the procurement contract to that entity is necessary to protect public property or public health or safety, and that the entity is the only source capable of supplying the required article of procurement within the necessary timeframe. If such is the case, the Department shall include in the procurement record a statement describing the basis for such a finding.
- b) Any subsequent determination of an Offeror's non-responsibility due to violation of these requirements within four years of a prior determination of non-responsibility due to a violation of these requirements shall result in the Offeror being rendered ineligible to submit a proposal or be awarded any procurement contract for a period of four years from the date of the second non-responsibility determination.

**X. Model Language For Solicitation Documents**

The Department's staff shall ensure that the model language set forth below is included in all solicitation documents issued by the Department, subject to final review by their Offices of Counsel:

**Restrictions on Contacts Between  
Offerors and State Staff During the Procurement Process**

- a) Pursuant to State Finance Law sections 139-j and 139-k, this procurement imposes certain procurement lobbying limitations. Offerors are restricted from making contacts during the procurement’s “Restricted Period” to other than designated staff of the Department and the Executive Branch of New York State government, unless the contact falls within certain statutory exceptions (“permissible contacts”). Staff is required to obtain certain information from Offerors and others whenever there is a contact about the procurement during the Restricted Period, and are required to make a determination of the Offeror’s responsibility that addresses the Offeror’s compliance with the statutes’ requirements. Findings of non-responsibility result in rejection for contract award, and if an Offeror is subject to two non-responsibility findings within four years the Offeror also will be determined ineligible to submit a proposal on or be awarded a contract for four years from the date of the second non-responsibility finding. The Department’s policy and procedures are attached as Exhibit I.K to this RFP. Further information about these requirements can be found at:

<http://www.ogs.ny.gov/aboutOGS/regulations/defaultAdvisoryCouncil.html>

- b) In order to ensure public confidence and integrity in the procurement process, the Department will control strictly all communications between any Offeror and participants in the evaluation process from the earliest notice of intent to solicit offers in this procurement through the final award and approval of the procurement contract by the Department and OSC, if applicable. “Offeror” means any individual or entity, or any employee, agent, consultant, or person acting on behalf of such individual or entity, who contacts the Department or any other State governmental entity about a governmental procurement during that procurement’s restricted period whether or not the caller has a financial interest in the outcome of the governmental procurement; provided, however, that a governmental agency or its employees that communicates with the Department regarding a governmental procurement in the exercise of its oversight duties shall not be considered an Offeror. “Offeror” includes prospective Offerors prior to the due date for the submission of offers/bids in response to the solicitation document. All contacts and inquiries concerning this procurement must be made to the Procurement Manager. The Department shall disqualify any Offeror who fails to comply with this requirement.

Dispute Resolution Program Procurement Manager  
Attn: George Powers  
NYS Civil Service  
Agency Bldg. 1  
Empire State Plaza  
Albany, NY 12239  
Fax: **(518) 473-1788**  
E-mail: **mailto:DRP2016RFP@cs.ny.gov**

Additionally, any Offeror is strictly prohibited from making any contacts or inquiries concerning the procurement with any member, officer or employee of any governmental entity other than the Department from the date the public announcement, public notice, or public communication to any potential vendor of a determination of need for a procurement, which shall include, but not be limited to, the date the RFP is released until the end of the procurement, subject only to the specific exceptions listed below. Further, any Offeror shall not attempt to influence the procurement in any

## **Exhibit I.L – Procurement Lobbying Policy**

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manner that would result in a violation or an attempted violation of Public Officers Law sections 73(5) or 74.

- c) The following contacts are exempted from the provisions of paragraph 3 of section 139-j and as such do not need to be directed to the Procurement Manager pursuant to section 139-k:
- (1) the submission of written proposals in response to the solicitation document;
  - (2) the submission of written questions by a method set forth in the solicitation document when all written questions and responses are to be distributed to all Offerors who have expressed an interest in the procurement;
  - (3) participation in a demonstration, conference or other means for exchange of information in a setting open to all potential bidders provided for in the solicitation document;
  - (4) complaints by an Offeror regarding the failure of the Department's Procurement Manager to respond to an Offeror's authorized contacts, when such complaints are made in writing to the Department's Office of the General Counsel, provided that any such written complaints shall become a part of the procurement record;
  - (5) communications by a successful Offeror(s) who has been tentatively awarded a contract and is engaged in communications with the Department solely for the purpose of negotiating the terms of the contracts after having been notified of tentative award;
  - (6) contact by an Offeror to request the review of a procurement award when done in accordance with the procedure specified in the solicitation document;
  - (7)
    - A. contacts by an Offeror in protests, appeals or other review proceedings (including the apparent successful Offeror and its representatives) before the Department seeking a final administrative determination, or in a subsequent judicial proceeding; or
    - B. complaints of alleged improper conduct in the procurement when such complaints are made to the State Attorney General, Inspector General, District Attorney, or to a court of competent jurisdiction; or
    - C. protests, appeals or complaints to the State Comptroller's office during the process of contract approval, where the State Comptroller's approval is required provided that the state comptroller shall make a record of such communications and any response thereto which shall be entered into the procurement record pursuant to State Finance Law section 163; or
    - D. complaints of alleged improper conduct in a governmental procurement conducted by a municipal agency or local legislative body to the state comptroller's office; and
  - (8) communications between Offerors and governmental entities that solely address the determination of responsibility by a governmental entity of an Offeror.

**Exhibit I.M - Compliance with Public Officers Law Requirements**

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State of New York  
Department of Civil Service  
Alfred E. Smith State Office Building  
Albany, NY 12239

**Compliance with Public Officers Law Requirements**

ADM-992 (1/07)

The New York State Public Officers Law ("POL"), particularly POL Sections 73 and 74, as well as all other provisions of New York State law, rules and regulations, and policy establishes ethical standards for current and former State employees. In submitting its Proposal, the Offeror must guarantee knowledge and full compliance with such provisions for purposes of this RFP and any other activities including, but not limited to, contracts, bids, offers, and negotiations. Failure to comply with these provisions may result in disqualification from the procurement process, termination, suspension or cancellation of the contract and criminal proceedings as may be required by law.

The Offeror hereby submits its affirmative statement as to the existence of, absence of, or potential for conflict of interest on the part of the Offeror because of prior, current, or proposed contracts, engagements, or affiliations.

Please provide below an affirmative statement as to the existence of, absence of, or potential for conflict of interest on the part of the Offeror because of prior, current, or proposed contracts, engagements, or affiliations. Please attach additional pieces of paper as necessary.

Name of Offeror: \_\_\_\_\_

Name & Title of Representative: \_\_\_\_\_

Signature: \_\_\_\_\_

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

**Exhibit I.N - Compliance with Americans with Disabilities Act**



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

**Compliance with Americans with Disabilities Act**

ADM-987 (1/07)

The Offeror hereby provides assurance of its compliance with the Americans With Disabilities Act (42 USC§12101 et. seq.), in that any services and programs provided during the course of performance of the Agreement resultant from this RFP shall be accessible under Title II of the Americans With Disabilities Act, and as otherwise may be required under the Americans With Disabilities Act.

Name of Offeror: \_\_\_\_\_

Name & Title of Representative: \_\_\_\_\_

Signature: \_\_\_\_\_

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



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

**MWBE UTILIZATION PLAN**

OFFICE OF FINANCIAL ADMINISTRATION

MWBE-100 (9/2011)

**INSTRUCTIONS: All Offerors must complete this MWBE Utilization Plan and submit it as part of their Proposal. The Plan must contain a detailed description of the services to be provided by each Minority and/or Woman-Owned Business Enterprise (M/WBE) identified by the Offeror.**

<b>Offeror Name:</b>			<b>Federal Identification No.:</b>			
<b>Address:</b>			<b>Solicitation No.:</b>			
<b>City, State, Zip Code:</b>			<b>M/WBE Goals for the Solicitation: MBE:      % WBE:      %</b>			
<b>1. M/WBE Subcontractors/Suppliers Name, Address, Email Address, Telephone No.</b>	<b>2. Classification</b>	<b>3. Federal ID No.</b>	<b>4. Detailed Description of Work (Attach additional sheets, if necessary.)</b>	<b>5. Dollar Value of Subcontracts/Supplies</b>		
<b>A.</b>	NYS ESD Certified <input type="checkbox"/> MBE <input type="checkbox"/> WBE					
<b>B.</b>	NYS ESD Certified <input type="checkbox"/> MBE <input type="checkbox"/> WBE					
<b>6. WAIVER REQUESTED: MBE:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO <b>If YES, submit form MWBE101</b> / <b>WBE:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO <b>If YES, submit form MWBE101</b>						
<b>PREPARED BY (Signature):</b>			<b>TELEPHONE NO.:</b>	<b>EMAIL ADDRESS:</b>		
<b>NAME AND TITLE OF PREPARER (Print or Type):</b>						
<b>DATE: Offeror's Certification Status:</b> <input type="checkbox"/> MBE <input type="checkbox"/> WBE						
<p><b>SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FIUNDING OF NONCOMPLIANCE AND/OR PROPOSAL DISQUALIFICATION.</b></p>			*****FOR DEPARTMENT USE ONLY*****			
			<b>REVIEWED BY:</b>		<b>DATE:</b>	
			<b>UTILIZATION PLAN APPROVED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO <b>Date:</b> _____			
			<b>MBE CERTIFIED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO			
			<b>WBE CERTIFIED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO			
<b>WAIVER GRANTED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO						
<input type="checkbox"/> Total Waiver <input type="checkbox"/> Partial Waiver						
<b>NOTICE OF DEFICIENCY ISSUED:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO						
<b>Date:</b> _____						

**Offeror’s Certification of Compliance Pursuant to State Finance Law §139-k(5)**

**Instructions:**

New York State Finance Law (SFL) §139-k(5) requires that every contract award subject to the provisions of SFL §§139-k or 139-j shall contain a certification by the Offeror that all information provided to the Department with respect to SFL §139-k is complete, true and accurate.

At the time an Offer or Bid is submitted to the Department, the Offeror must provide the following certification that the information it has and will provide to the Department pursuant to SFL §139-k is complete, true and accurate including, but not limited to, disclosures of findings of non-responsibility made within the previous four years by any State governmental entity where such finding of non-responsibility was due to a violation of SFL §139-j or due to the intentional provision of false or incomplete information to a State governmental entity.

**Offeror Certification**

*I certify that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.*

Name of Offeror: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

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

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

Address: \_\_\_\_\_

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

**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) 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.
- (4) 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.
- (5) 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



## Exhibit I.Q – M/WBE and EEO Policy Statement

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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

**Exhibit I.Q – M/WBE and EEO Policy Statement**

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Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2016

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.

(1) 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.

**M/WBE Contract Goals**

0% 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: \_\_\_\_\_

**Exhibit I.R - Questions Template**

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**RFP #DRP-2016-1  
“Dispute Resolution Program”**

**Questions Template**

<b>Question Number</b>	<b>RFP Page #</b>	<b>Section and Sub-Section Reference</b>	<b>Question</b>

Offerors are requested to use the Questions Template table above in submitting questions. Offeror’s questions must be submitted to the Dispute Resolution Program Procurement Manager at the address specified in Section II.A.6 of this RFP, with an electronic copy (in Microsoft Word format) of the Offeror’s questions sent to the Dispute Resolution Program Procurement Manager’s attention at: [DRP2016RFP@cs.ny.gov](mailto:DRP2016RFP@cs.ny.gov).

[TO BE COMPLETED ON OFFEROR'S LETTERHEAD]

Date

Mr. Seth Johnson  
Procurement Manager  
Employee Benefits Division – Room 1106  
NYS Department of Civil Service  
Albany, NY 12239

**RE: Request for Proposals #DRP-2016-1 entitled:  
“Dispute Resolution Program,”  
Firm Offer to the State of New York**

**[INSERT OFFEROR NAME]** hereby submits this firm and binding offer to the State of New York in response to the Department’s Request for Proposals #DRP-2016-1, entitled “**Dispute Resolution Program,**” (RFP). The Proposal hereby submitted meets or exceeds all terms, conditions, and requirements set forth in the above-referenced RFP and in the manner set forth in this RFP.

**[INSERT OFFEROR NAME]** accepts the terms and conditions as set forth in RFP, Section VII and Appendices A, B, C, and D and agrees to satisfy the comprehensive programmatic duties and responsibilities outlined in this RFP in the manner set forth in this RFP.

**[INSERT OFFEROR NAME]** agrees to execute a contractual agreement composed substantially of the terms and conditions set forth in the draft contract included in the RFP, and accepts as non-negotiable the terms and conditions set forth in Appendices A, B, C, C-1, D, D-1, and D-2 to the draft contract.

**[INSERT OFFEROR NAME]** further agrees, if selected as a result of the RFP, to comply with 1) the provisions of Tax Law Section 5-a, Certification Regarding Sales and Compensating Use Tax; and 2) the Workers’ Compensation Law as set forth in Section II.B.7 of the RFP.

This formal offer will remain firm and non-revocable for a minimum period of 365 days from the Proposal Due Date as set forth in the RFP. In the event that a contract is not approved by the NYS Comptroller within the 365 day period, this offer shall remain firm and binding beyond the 365 day period and until a contract is approved by the NYS Comptroller, unless **[INSERT OFFEROR NAME]** delivers to the Department of Civil Service written notice of withdrawal of its Proposal.

**[INSERT OFFEROR NAME]**’s complete offer is set forth as follows:

Administrative Proposal: Total of twelve (12) hard copy volumes [two (2) original and ten (10) copies] and one (1) electronic copy on CD.

Technical Proposal: Total of twelve (12) hard copy volumes [two (2) original and ten (10) copies] and one (1) electronic copy on CD.

Cost Proposal: Total of twelve (12) hard copy volumes [two (2) original and ten (10) copies] and one (1) electronic copy on CD.

**Exhibit I.S - Formal Offer Letter**

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The undersigned affirms and swears s/he has the legal authority and capacity to sign and make this offer on behalf of, **[INSERT OFFEROR NAME]** and possesses the legal authority and capacity to act on behalf of **[INSERT OFFEROR NAME]** to execute a contract with the State of New York.

The undersigned affirms and swears as to the truth and veracity of all documents included in this offer.

Date: \_\_\_\_\_ **[INSERT OFFEROR NAME]**

By: \_\_\_\_\_  
(signature)

\_\_\_\_\_ (name)

\_\_\_\_\_ (title)

\_\_\_\_\_ (phone number)

\_\_\_\_\_ (email address)

**CORPORATE OR PARTNERSHIP ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ } : **SS.:**  
On the \_\_\_\_ day of \_\_\_\_\_ in the year 2016, before me personally appeared:  
\_\_\_\_\_, 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  
\_\_\_\_\_, Town of  
\_\_\_\_\_  
County of \_\_\_\_\_, State of \_\_\_\_\_; and further that:

**[Check One]**  
( \_\_\_ If a corporation): \_he is the \_\_\_\_\_ of  
\_\_\_\_\_, 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

**Exhibit I.T - Offeror Attestations Form**

An authorized representative of the Offeror who is legally authorized to certify the information requested in the name of and on behalf of the Offeror is required to complete and sign the Offeror Attestations and provide all requested information. Offeror's authorized representative must certify as to the truth of the representations made by signing where indicated, below.

**CERTIFICATION:**

The Offeror (1) recognizes that the following representations are submitted for the express purpose of assisting the State of New York in making a determination to award a contract; (2) acknowledges and agrees by submitting the Attestation, that the State may at its discretion, verify the truth and accuracy of all statements made herein; (3) certifies that the information submitted in this certification and any attached documentation is true, accurate and complete.

Name of Business Entity Submitting Bid:		
Entity's Legal Form:		<input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Other _____
No.	RFP Ref.	RFP Requirement:
1.	Section III.B.1	At time of Proposal Due Date, Offeror represents and warrants that it: <input type="checkbox"/> possesses <input type="checkbox"/> does not possess the legal capacity to enter into a contract with the Department.
2.	Section III.B.2	At time of Proposal Due Date, Offeror represents and warrants that it: <input type="checkbox"/> attests <input type="checkbox"/> does not attest that it understands and agrees to comply with all specific duties and responsibilities set forth in Section IV of this RFP.
3.	Section III.B.3	At time of Proposal Due Date, Offeror represents and warrants that it: <input type="checkbox"/> attests <input type="checkbox"/> does not attest its principal place of business is not located in a state that penalizes New York State vendors and that, if selected goods or services provided under the Agreement will not be substantially produced or performed in such a state.
4.	Section III.B.4	At time of Proposal Due Date, Offeror represents and warrants that it: <input type="checkbox"/> attests <input type="checkbox"/> does not attest it has obtained Full Accreditation by the Utilization Review Accreditation Commission (URAC) in the area of Independent Review Organization.

**Exhibit I.T - Offeror Attestations Form**

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5.	Section III.B.5	<p>At time of Proposal Due Date, Offeror represents and warrants that it:</p> <ul style="list-style-type: none"><li><input type="checkbox"/> attests</li><li><input type="checkbox"/> does not attest</li></ul> <p>it will maintain and make available as required by the State, a complete and accurate set of records as may be required by the State to be produced for review by the State pursuant to the terms and conditions of this RFP, Appendices A and B, and including any and all financial records as deemed necessary by the State to discharge its fiduciary responsibilities to Plan participants and to ensure that public dollars are spent appropriately.</p>
6.	Section III.B.6	<p>At time of Proposal Due Date, Offeror represents and warrants that it:</p> <ul style="list-style-type: none"><li><input type="checkbox"/> attests</li><li><input type="checkbox"/> does not attest</li></ul> <p>it understands it must distribute Program communication materials in both paper and/or electronic format.</p>

**Exhibit I.T - Offeror Attestations Form**

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

\_\_\_\_\_ Signature

**[INSERT OFFEROR NAME]**  
**[INSERT TITLE]**  
**[INSERT COMPANY NAME]**

**CORPORATE OR PARTNERSHIP ACKNOWLEDGMENT**

**STATE OF** \_\_\_\_\_ }  
: **SS.:**  
**COUNTY OF** \_\_\_\_\_ }

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2016, before me personally appeared: \_\_\_\_\_, 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 \_\_\_\_\_, Town of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_; and further that:

**[Check One]**

( \_\_\_ **If a corporation**): \_he is the \_\_\_\_\_ of \_\_\_\_\_, 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**



**Exhibit I.U.1 - Key Subcontractors or Affiliates**

The Offeror must complete and submit this Exhibit as part of its Administrative Proposal. A separate form should be completed for each Key Subcontractor or Affiliate, if any. If the Offeror will not be subcontracting with any Key Subcontractor(s) or Affiliate(s) to provide any of the services required under this RFP, the Offeror must complete and submit a single Exhibit I.U.1 to that affect.

<b>INSTRUCTION: Prepare this form for each Key Subcontractor or Affiliate</b>	
<b>Offeror's Name:</b>	
The Offeror: <input type="checkbox"/> is <input type="checkbox"/> is not proposing to utilize the services of a Key Subcontractor(s) or Affiliate(s) to provide Program Services  <input type="checkbox"/> is <input type="checkbox"/> is not proposing to utilize the services of a subcontractor(s) to provide Program Services totaling \$100,000 or more during the term of the 5 year agreement	
<b>Subcontractor's Legal Name:</b>	
<b>Business Address:</b>	
<b>Subcontractor's Legal Form:</b>	<input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Other _____
As of the date of the Offeror's Proposal, a subcontract <input type="checkbox"/> has <input type="checkbox"/> has not been executed between the Offeror and the subcontractor(s) for services to be provided by such subcontractor(s) relating to Dispute Resolution Program Services.	
In the space provided below, describe the Key Subcontractor's or Affiliate's role(s) and responsibilities regarding Program Services to be provided.	
<b>Relationship between Offeror and Key Subcontractor or Affiliate for Current Engagements:</b> (Complete items 1 through 5 for each client engagement identified)	
1. Client:	
2. Client Reference Name and Phone #	
3. Program Title:	
4. Program Start Date:	
5. In the space provided below, Program Status:	
6. In the space provided below, describe the roles and responsibilities of the Offeror and subcontractor in regard to the program identified in 3, above:	



**Exhibit I.V - Program References**

---

**Reference #:** \_\_\_\_\_

**Current or Former Customer?:** \_\_\_\_\_

Abstract	
Customer For Whom Services Were Performed: _____	
Customer Address: _____ _____ _____	
Program Description: (The Offeror should submit specific details concerning the program identified in satisfaction of the requirements in this RFP, Section III.E. This information should be provided as an attachment to this form and the information provided should support the Offeror's assertion that it can successfully implement and administer programs of the scope and complexity as set forth in this RFP# DRP-2016-1.)	
Program Contact References: (Required And Will Be Verified) (Attach 2 current and 1 former client reference)	
Contact Name: _____	Contact Title: _____
Phone Number: _____	E-Mail Address: _____
Contact Name: _____	Contact Title: _____
Phone Number: _____	E-Mail Address: _____

---

## **Exhibit I.W - Compliance with NYS Workers' Compensation Law**

Sections 57 and 220 of the New York State Workers' Compensation Law (WCL) provide that the Department shall not enter into any contracts unless proof of workers' compensation and disability benefits insurance coverage is produced. Prior to entering into contracts with DCS, the selected Offeror will be required to verify for DCS, on forms authorized by the New York State Workers' Compensation Board, the fact that they are properly insured or are otherwise in compliance with the insurance provisions of the WCL. The forms to be used to show compliance with the WCL are listed below. DCS requests the Offeror submit this insurance verification information with their Proposals. Any questions relating to either workers' compensation or disability benefits coverage should be directed to the State of New York Workers' Compensation Board, Bureau of Compliance at (518)486-6307. You may also find useful information at their website <http://www.wcb.ny.gov>. Failure to provide verification of either of these types of insurance coverage by the time the winning Offeror is selected and the Contract is ready to be executed will be grounds for disqualification of an otherwise successful Proposal.

### **Workers' Compensation Requirements under WCL § 57:**

To comply with coverage provisions of the WCL, businesses must:

- A) be legally exempt from obtaining workers' compensation insurance coverage; or
- B) obtain such coverage from insurance carriers; or
- C) be a Board-approved self-insured employer or participate in an authorized group self-insurance plan.

To assist State and municipal entities in enforcing WCL Section 57, businesses requesting permits or seeking to enter into contracts **MUST provide ONE** of the following forms to the government entity issuing the permit or entering into a contract:

- A) CE-200, Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage <sup>(1)</sup>; **OR**
- B) C-105.2 -- Certificate of Workers' Compensation Insurance (the business's insurance carrier will send this form to the government entity upon request) **PLEASE NOTE:** The State Insurance Fund provides its own version of this form, the U-26.3; **OR**
- C) SI-12 -- Certificate of Workers' Compensation Self-Insurance (the business calls the Board's Self-Insurance Office at 518-402-0247), **OR** GSI-105.2 -- Certificate of Participation in Worker's Compensation Group Self-Insurance (the business's Group Self-Insurance Administrator will send this form to the government entity upon request).

### **Disability Benefits Requirements under Workers' Compensation Law §220(8)**

To comply with coverage provisions of the WCL regarding disability benefits, businesses may:

- A) be legally exempt from obtaining disability benefits insurance coverage; or
- B) obtain such coverage from insurance carriers; or
- C) be a Board-approved self-insured employer.

Accordingly, to assist State and municipal entities in enforcing WCL Section 220(8), businesses requesting permits or seeking to enter into contracts **MUST provide ONE** of the following forms to the entity issuing the permit or entering into a contract:

- A) CE-200, Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage <sup>(1)</sup>; **OR**
- B) DB-120.1 -- Certificate of Disability Benefits Insurance (the business's insurance carrier will send this form to the government entity upon request); **OR**
- C) DB-155 -- Certificate of Disability Benefits Self-Insurance (the business calls the Board's Self-Insurance Office at 518-402-0247).

<sup>(1)</sup> *Starting December 1, 2008, Form CE-200 can be filled out electronically on the Board's website, [www.wcb.state.ny.us](http://www.wcb.state.ny.us), under the heading "Forms." Applicants filing electronically are able to print a finished Form CE-200 immediately upon completion of the electronic application. Applicants without access to a computer may obtain a paper application for the CE-200 by writing or visiting the Customer Service Center at any District Office of the Workers' Compensation Board. Applicants using the manual process may wait up to four weeks before receiving a CE-200. Once the applicant receives the CE-200, the applicant can then submit that CE-200 to the government agency from which he/she is getting the permit, license or contract.*

---

**Extraneous Terms Template  
(Instructions for Documentation and Submission)**

---

Offerors shall identify all Extraneous Terms in the table provided on the following page, and shall adhere to all instructions below for preparing the table.

**INSTRUCTIONS:**

**RFP Section  
and Sub-Section  
Reference:**

The Offeror must insert the exact RFP Section, and Sub-Section number of the requirement(s) that the Offeror is proposing to modify. The Offeror must insert the nature of the proposed change and its impact on the Requirement.

**RFP Requirement:**

The Offeror must insert a concise description of the requirement(s) that the Offeror is proposing to modify.

**Proposed  
Extraneous Term  
Type:**

The Offeror must insert a one-word description, of the type of modification to each of the requirement(s) that the Offeror is proposing to modify, selected from the following list:

- Additional;
- Supplemental;
- “Or Equal”; or
- Alternative

**Proposed  
Extraneous  
Term:**

The one-word description must be followed by proposed alternate wording of the requirement(s).

**Impact on RFP  
Requirement:**

The Offeror should describe the impact of the alternate wording. Then, the comments should explain how the modification(s) would benefit the State and provide best value. If there is a corresponding impact on the Administrative, Technical or Cost Proposal(s), that impact should be explained here with reference(s) to the parts of the volume(s) that are affected. However, **DO NOT INCLUDE ANY COST DATA IN THE ADMINISTRATIVE OR TECHNICAL PROPOSALS.**

**The Offeror must use the table format described above and detailed on the following page to summarize its proposed Extraneous Terms, if any. The Offeror may refer to more voluminous narratives, tables, figures and appendices that more fully describe aspects of the Extraneous Terms, provided that the additional material is fully cross-referenced by this required table.**

**Extraneous Terms Template**

EXTRANEIOUS TERM(S)			
No.	RFP Section and Sub-Section Reference	RFP Requirement	Proposed Extraneous Term Type
1.			<input type="checkbox"/> Additional; <input type="checkbox"/> Supplemental; <input type="checkbox"/> "Or Equal"; or <input type="checkbox"/> Alternative
<u>Proposed Extraneous Term(s):</u>			
<u>Impact on RFP Requirement:</u>			

## Description of Groups Covered by the Dispute Resolution Program

Eligibility for and administration of the Dispute Resolution Program (DRP) varies slightly based on the collectively bargained benefits of each Employee group. There are two Employee groups that participate in the Program, as described below:

### A. Group 1 (approximately 25,000 Employees)

#### **Bargaining Unit: Security Services Unit (SSU)**

**Union:** NYS Correctional Officers and Police Benevolent Association, Inc. (NYSCOPBA)

The SSU includes state security personnel (other than State Police) and institution safety officers. Titles in this unit include Correction Officer, Correction Officer Trainee, Correction Sergeant, Community Correctional Center Assistant, Institution Safety Officer, Security Hospital Treatment Assistant, Safety and Security Officer, Security Services Assistant, Security Officer, and Campus Public Safety Officer.

#### **Bargaining Unit: Security Supervisors Unit (SSPU)**

**Union:** NYS Law Enforcement Officers' Union, District Council 82, AFSCME, AFL-CIO (C82)

The SSPU is composed of supervisory security personnel. Titles in this unit include Correction Lieutenant, Chief Safety and Security Officer, Chief Security Officer, and Security Services Assistant.

#### **Bargaining Unit: Agency Police Services Unit (APSU)**

**Union:** The Police Benevolent Association of New York State, Inc. (PBANYS)

The APSU is composed of personnel who have police duties and responsibilities and are employed in the Department of Environmental Conservation, Office of Parks, Recreation and Historic Preservation and the State University of New York. Titles in this unit include the Park Patrol Officers, Environmental Conservation and Conservation Officers, University Police, and the Forest Rangers. Titles in this unit include the Park Police series, Environmental Conservation Officer series, Environmental Conservation Investigator series, University Police

series, University Police Investigator series, Forest Ranger series and Forest Ranger Investigator series.

**Bargaining Unit: State University Professional Services Negotiating Unit (PSNU)**

**Union:** United University Professions (UUP)

The PSNU includes faculty, and non-teaching professional staff within the State University system and various lifeguard titles (68) are employed on a seasonal and temporary part-time basis.

**B. Group 2 (approximately 5,000 Employees)**

**Bargaining Unit: State Police Troopers Unit (Troopers Unit)**

**Union:** Police Benevolent Association of the New York State Troopers, Inc. (PBA)

The Troopers Unit includes troopers in the Division of State Police responsible for operations at State Police stations, road patrol, and law enforcement.

**Bargaining Unit: State Police Commissioned/Non-Commissioned Officers (CO/NCO)**

**Union:** Police Benevolent Association of the New York State Troopers, Inc. (PBA)

The CO/NCO consists of majors, captains, lieutenants, and various levels of sergeants responsible for supervising troopers and investigators in the Division of State Police.

**Bargaining Unit: State Police Investigation Unit (BCI)**

**Union:** NYS Police Investigators Association, Local 4, I.U.P.A, AFL-CIO (NYSPIA)

The BCI consists of investigators and senior investigators in the Division of State Police responsible for undercover surveillance and investigations of major crimes.

**Bargaining Unit: State Police Management/Confidential Group**

**Union:**

The State Police Management/Confidential Group consists of management Employees who are not represented.





## Results of Examination (continued)

It is unlawful for any person who has obtained individually identifiable information from Workers' Compensation Board records to disclose such information to any person who is not otherwise lawfully entitled to obtain these records. Any person who knowingly and willfully obtains workers' compensation records which contain individually identifiable information under false pretenses or otherwise violates Workers' Compensation Law Section 110-a shall be guilty of a class A misdemeanor and shall be subject upon conviction, to a fine of not more than one thousand dollars.

**HIPAA Notice:** In order to adjudicate a workers' compensation claim, WCL Sections 13-a and 137 permit an employer or carrier to have a claimant examined by a health care provider. Pursuant to 45 CFR 512 a health care provider who has been retained by an employer or carrier to evaluate a workplace injury is exempt from HIPAA's restrictions on disclosure of health information.

Reports should be sent directly to the Workers' Compensation Board at the address listed below:

**NYS Workers' Compensation Board, Centralized Mailing, PO Box 5205, Binghamton, NY 13902-5205**

**Customer Service Toll-Free Line: 877-632-4996**

**Statewide Fax Line: 877-533-0337**

Name of Physician:	Name of Employee:
--------------------	-------------------

**Note: Important Information on Reverse**

Instructions: If the employee is found to be 50% or less disabled, please complete this form based on your estimation of his/her physical capabilities.

1. Medical Diagnosis: \_\_\_\_\_

2 a. In an eight hour workday, how many hours can this employee: (please check appropriate boxes)

Sit	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8	<input type="checkbox"/> Continuously	<input type="checkbox"/> With Rests
Stand	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8	<input type="checkbox"/> Continuously	<input type="checkbox"/> With Rests
Walk	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8	<input type="checkbox"/> Continuously	<input type="checkbox"/> With Rests

b. In a given day, for how many hours can this employee sit, stand, and/or walk in combination?

- 4    6    8    10    12    14    16

3. Other Capabilities: (please check appropriate boxes)

	Never	Occasionally	Frequently	Continuously										
<b>Lift</b>					Upper Extremities: Which hand is dominant? <input type="checkbox"/> Right <input type="checkbox"/> Left Can this employee perform repetitive actions such as:									
0-10 lbs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>										
11-20 lbs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>										
21-50 lbs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>										
51-100 lbs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>										
<b>Carry</b>					Right Left									
0-10 lbs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;">Simple Grasping</td> <td style="width:33%;">Pushing &amp; Pulling</td> <td style="width:33%;">Fine Manipulation</td> </tr> <tr> <td><input type="checkbox"/> Yes <input type="checkbox"/> No</td> <td><input type="checkbox"/> Yes <input type="checkbox"/> No</td> <td><input type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> </table>	Simple Grasping	Pushing & Pulling	Fine Manipulation	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Simple Grasping	Pushing & Pulling	Fine Manipulation												
<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No												
11-20 lbs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;">Simple Grasping</td> <td style="width:33%;">Pushing &amp; Pulling</td> <td style="width:33%;">Fine Manipulation</td> </tr> <tr> <td><input type="checkbox"/> Yes <input type="checkbox"/> No</td> <td><input type="checkbox"/> Yes <input type="checkbox"/> No</td> <td><input type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> </table>	Simple Grasping	Pushing & Pulling	Fine Manipulation	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Simple Grasping	Pushing & Pulling	Fine Manipulation												
<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No												
21-50 lbs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;">Simple Grasping</td> <td style="width:33%;">Pushing &amp; Pulling</td> <td style="width:33%;">Fine Manipulation</td> </tr> <tr> <td><input type="checkbox"/> Yes <input type="checkbox"/> No</td> <td><input type="checkbox"/> Yes <input type="checkbox"/> No</td> <td><input type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> </table>	Simple Grasping	Pushing & Pulling	Fine Manipulation	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No			
Simple Grasping	Pushing & Pulling	Fine Manipulation												
<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No												
51-100 lbs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;">Simple Grasping</td> <td style="width:33%;">Pushing &amp; Pulling</td> <td style="width:33%;">Fine Manipulation</td> </tr> <tr> <td><input type="checkbox"/> Yes <input type="checkbox"/> No</td> <td><input type="checkbox"/> Yes <input type="checkbox"/> No</td> <td><input type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> </table>	Simple Grasping	Pushing & Pulling	Fine Manipulation	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No			
Simple Grasping	Pushing & Pulling	Fine Manipulation												
<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No												
<b>Bend</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Lower Extremities: Use of feet/legs for repetitive movement as in operation of foot controls and motor vehicles.									
<b>Squat</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>										
<b>Crawl</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>										
<b>Climb</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>										
<b>Run</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>										
<b>Reach above shoulder level</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>										
<b>Operate a motor vehicle</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>										

4. Work Environment Restrictions

Can this employee:

- Be exposed to marked changes in temperature and humidity?  Yes  No
- Be exposed to unprotected heights?  Yes  No
- Be around moving machinery?  Yes  No

5. Other Restrictions

- Can this employee restrain combative clients?  Yes  No
- Does this employee have any visual or hearing impairment requiring accommodation?  Yes  No

If "Yes", please explain: \_\_\_\_\_  
 \_\_\_\_\_

6. Based on your examination(s) of this employee, are there any known problems of a general nature, including any medications prescribed for the diagnosis listed, that would interfere with this employee returning to work?

Yes  No If "Yes", please explain: \_\_\_\_\_  
 \_\_\_\_\_

7. When, in your estimation, will this employee be ready to return to full duty? Date \_\_\_\_\_

Comments: \_\_\_\_\_  
 \_\_\_\_\_

Physician's Signature	Telephone Number	Date
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## ALTERNATE DUTY PROGRAM

New York State and several public employee unions have negotiated Alternate Duty Programs as part of the employer-provided benefits associated with workers' compensation disabilities.

These programs allow employees in the affected bargaining units, who have been disabled temporarily due to occupational accidents, to return to work prior to full recovery and work in assignments that meet both the needs of the agency and the medical limitations of the employees.

Employees benefit from these programs by returning to work and becoming productive more quickly, thus enhancing the recuperation process. Agencies benefit from these programs because they have the services of employees who would otherwise be unable to return to work.

When an employee's level of disability is classified at 50 percent or less (mildly or moderately disabled) and the employee is within 60 days of full recovery, he/she is qualified for an alternate duty assignment. The agency will use the information provided on this form to design an assignment that is consistent with the employee's limitations and capabilities. An assignment will be given to an employee initially for no more than 60 days. Agencies can extend assignments on a discretionary basis until the employee has fully recovered and returns to his/her regular assignment.

During the period of alternate duty, the employee will be expected to provide periodic medical documentation from the attending physician to verify that the employee's medical condition and the assignment remain consistent and to confirm full recovery prior to returning to the regular job assignment.

Questions concerning the information on this form should be directed to the evaluating physician at the telephone number listed. Questions concerning the alternate duty assignment should be directed to the employee's agency.

**Estimated Physical Capabilities Form-New York State Police-Sworn Members**

Name of Physician:	Name of Employee:
--------------------	-------------------

Note: Important Information on Reverse

1. INSTRUCTIONS: If the employee is found to be 50% or less disabled, please complete this form based on your estimation of his/her current physical capabilities.

2. Medical Diagnosis:

A. in an eight hour workday, how many hours can this employee: (please check appropriate boxes.)

Sit	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8	<input type="checkbox"/> Continuously	<input type="checkbox"/> With Rests
Stand	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8	<input type="checkbox"/> Continuously	<input type="checkbox"/> With Rests
Walk	<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8	<input type="checkbox"/> Continuously	<input type="checkbox"/> With Rests

B. in a given day, for how many total hours can this employee sit, stand, and/or walk in combination?

4 6 8 10 12 14 16

3. Other Capabilities (Please check appropriate boxes.)

	Never	Occasionally	Frequently	Continuously
Lift				
00-10lbs				
11-20 lbs.				
21-50 lbs.				
51-100lbs				
Carry				
00-10 lbs.				
11-20 lbs.				
21-50 lbs.				
51-100 lbs.				
Bend				
Squat				
Crawl				
Climb				
Run				
Reach above Shoulder level				
Operate a Motor Vehicle				

Upper Extremities: Which hand is dominant?  Right  Left

Can this employee perform repetitive actions such as:

Simple Grasping	Pushing & Pulling	File Manipulation
Right <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Left <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

Lower Extremities: Use of feet/legs for repetitive movement, as in operation of foot controls and motor vehicles.

Right Extremity	Left Extremity	Simultaneous
<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

4. Work Environment Restrictions:

Can this employee:

- Be exposed to marked change in temperature and humidity?  Yes  No
- Be exposed to unprotected heights?  Yes  No
- Be around machinery?  Yes  No

5. Other Restrictions:

- Can this employee effect arrests and restrain prisoners?  Yes  No
- Does this employee have any visual or hearing impairment requiring accommodation?  No  Yes if "Yes"

Please explain \_\_\_\_\_

Can this employee fire a Division sidearm with strong hand?  Yes  No

6. Based upon your examination(s) of this employee, are there any known problems of a general nature, including any medications prescribed for the diagnosis listed, that would interfere with this employee returning to work?  No  Yes, if "Yes", please indicate \_\_\_\_\_

7. When in your estimation, will this employee be ready to return to full duty? Date: \_\_\_\_\_

8. Comments: \_\_\_\_\_

Physician's Signature	Telephone Number	Date
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NEW YORK STATE DEPARTMENT OF CIVIL SERVICE  
ATTENDANCE AND LEAVE MANUAL

Policy Bulletin 93-02


Section 21.8

April 1, 1993

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File this material in the section of the manual referenced above.

TO: State Departments and Agencies

FROM: Josephine L. Gambino, Commissioner 

SUBJECT: State/Council 82 Workers' Compensation Leave Program -  
1991-1995 Negotiated Agreements for Security Services and  
Security Supervisors Units

As stated in our October 22, 1992, Policy Bulletin 92-03 on Attendance and Leave items in the 1991-95 agreements with Council 82, the workers' compensation benefits have changed; these are the guidelines for the Workers' Compensation Leave Benefit Program contained in the Security Services Unit and the Security Supervisors Unit contracts. The implementation date for this new benefit is April 15, 1993. Accidents occurring on or after that date are subject to these guidelines. Accidents occurring prior to April 15, 1993, are subject to the provisions of the 1988-91 contracts.

This material has been prepared to assist you in implementing the revised workers' compensation provisions. If you have any questions, contact the Employee Relations Section of the Department of Civil Service at (518) 457-5167.

Attachments



NEW YORK STATE DEPARTMENT OF CIVIL SERVICE  
ATTENDANCE AND LEAVE MANUAL

Policy Bulletin 93-02

Section 21.8

April 1, 1993

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**INTRODUCTION**

The significant change in the workers' compensation benefits for injuries occurring on or after April 15, 1993, for Security Services and Security Supervisors Units' employees, is the ability of an employee to choose Workers' Compensation Law benefits or the Leave Benefit Program provided in the contract. If the contractual benefits are chosen, the individual agrees to be part of a medical evaluation process designed to return individuals to work on limited or light duty prior to full recovery.

The medical evaluation process set up in connection with this benefit is available to management for all Council 82-represented employees who apply for workers' compensation benefits, regardless of the date of the accident, to verify ongoing disability. The medical examinations conducted under this evaluation process do not replace current requirements, but are in addition to any medical reports required by agencies in connection with granting leave benefits or by the State Insurance Fund (SIF) in connection with their responsibilities to provide benefits pursuant to the Workers' Compensation Law.

Initially, SIF will function as the third party administrator for the group of physicians that will be conducting the examinations under this medical evaluation process. A request for proposal is being developed and if another vendor is selected in the future, a memorandum will be issued announcing the effective date and any procedural changes that become necessary.

Only employees whose accidents occur on or after April 15, 1993, are subject to the limited duty portion of the new Leave Benefit Program on a mandatory basis. Other Council 82-represented employees who are recovering from any temporary disability, whether caused by an occupational or ordinary accident or illness, can be offered limited duty under this process, but cannot be required to accept it.

An employee who elects Workers' Compensation Law coverage only, should be placed on leave without pay for all absences related to the workers' compensation accident. This is a regular leave without pay with no additional benefits accruing to the individual. The employee continues to be subject to Section 71 of the Civil Service Law and is entitled to a minimum of one cumulative year of absence and due process proceedings pursuant to Rule 5.9.

An employee who elects to receive benefits under the Workers' Compensation Leave Benefit Program provided in Article 14.9 must



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participate in the medical evaluation and limited duty components of the Program to receive leave benefits. The leave benefit component of the Program has not been changed from the 1988-1991 agreements and continues to be administered in accordance with the explanation provided in the Attendance and Leave Manual, Section 21.8, pp. C10-C19.

FOR EACH SEPARATE ACCIDENT EMPLOYEES MUST ELECT WHICH BENEFIT THEY WANT AT THE TIME THEY REPORT THE ACCIDENT, OR AS SOON THEREAFTER AS POSSIBLE, ON FORMS PROVIDED BY THE STATE. A sample form is attached for agencies to duplicate and use for this purpose. Employees are allowed to make one selection per injury; once a benefit choice has been made, the employee is subject to that benefit for all absences related to that injury.

**BENEFIT DESCRIPTION: Workers' Compensation Leave Benefit Program**

The Workers' Compensation Leave Benefit Program for the Security Services and Security Supervisors Units has three components: the leave benefits as applicable to workers' compensation related absences, the medical evaluation process, and the assignment of limited duty to qualified employees.

**I. Leave Benefits**

As identified in the introduction above, the workers' compensation leave benefits have not been changed except to require that employees participate in the medical evaluation and limited duty components to be eligible for these leave benefits. Employees who elect participation in the Leave Benefit Program and whose absences are accepted by management as workers' compensation are entitled to a cumulative total of six months of leave with pay without charge to credits, followed by use of all available leave credits, by use of sick leave at half-pay (if eligible) and finally, by leave without pay, subject to the provisions of Section 71 of the Civil Service Law and Rule 5.9.

If management denies leave benefits pursuant to the reasons authorized by the negotiated agreements, the employee will either (1) be covered by ordinary disability benefits if the issue is that the disability is not job related, or (2) the employee will be placed on leave without pay if management believes the individual could report for work, subject to resolution of the claim. This represents no change from the administration of workers' compensation leave for accidents occurring prior to April 15, 1993, pursuant to the terms of the 1988-91 agreements.



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II. Medical Evaluation Process

Every accident on or after April 15, 1993, for which the employee elects the Leave Benefit Program and has lost time beyond two full workdays after the date of the accident will be reviewed by management for the purpose of determining the need to schedule a medical evaluation. Agencies should request a medical evaluation under any of the following circumstances:

- the initial prognosis indicates that the absence will last beyond six weeks. In this case the medical evaluation should be scheduled at about five weeks of absence.
- the individual's prognosis indicates that the absence will be less than six weeks, but the employee does not return to work on the specified date. The medical evaluation should be scheduled as soon as possible after the employee fails to return.
- whenever management has reason to believe the individual may be eligible for a limited duty assignment because of the nature of the injury and/or the medical information received.

The employing agency will contact the local SIF representative and request a "Security Medical Evaluation" whenever it is determined that such an evaluation is needed. The State Insurance Fund has agreed to schedule these examinations within five work days of receiving the request.

The employing agency is expected to provide the SIF with the following documentation in connection with such a request:

- current medical reports and C-2, if not already provided.
- current mailing address and telephone number of employee.
- agency contact person and telephone and telefax numbers.

This information should be "faxed" to SIF to avoid delays in scheduling medical examinations.

The SIF will notify the employee and the employer of the date, time and location of the examination. If an employee is unable to attend a scheduled medical examination, he/she is responsible for notifying the employer, in addition to the



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SIF, and should be so advised at the time the examination is scheduled. SIF will also notify the agency if an employee does not report for a scheduled examination. The agency will advise SIF whether or not the examination should be rescheduled. Employees who do not attend these scheduled medical examinations will be subject to appropriate administrative action.

Reasonable and necessary travel expenses incurred by employees attending these examinations will be paid by SIF in accordance with their normal procedures for travel expense reimbursement. Questions on travel expenses should be directed to the agency's usual SIF contact person.

The medical examination will be detailed enough to allow the evaluating physician to determine the employee's level of disability and prognosis for full recovery. In addition, if the level of disability is found to be at 50 percent or less, the evaluating physician will provide a statement of capabilities/limitations so that the agency has sufficient information to establish a limited duty assignment for the employee. A copy of the Estimated Physical Capabilities Form to be used for this purpose is attached. The limited duty should be assigned for the duration of the disability or 45 days, whichever is less.

The SIF will make the results of the medical evaluation, including the limitations statement, available to the employer, within two workdays of the examination. The evaluating physician's report, including the statement of limitations/capabilities, if prepared, will be provided to the employee's treating physician also.

If the employee is more than 50 percent disabled, he/she will continue to receive the leave benefits that are appropriate for his/her length of absence.

If the employee is 50 percent or less disabled, the agency must notify the employee whether he/she is being assigned to limited duty or being allowed to continue the absence receiving the benefits appropriate to the length of absence. Details concerning these assignments are in III, below.

Based on the prognosis given by the evaluating physician and such physician's recommendation, periodic reevaluations should be scheduled until such time as the employee is eligible for a limited duty assignment or fully recovers and is returned to work. Each time such an examination is scheduled, the time



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frames described above for scheduling and receipt of reports will be applied. The employing agencies are directed to discuss reevaluations with the local SIF representative upon completion of the initial evaluation and at any time they believe such an evaluation is needed.

III. Limited Duty Assignments

A. Administration

When an employee's level of disability is classified at 50 percent or less, the individual is qualified for a limited duty assignment.

This level of disability determination is made by the State Insurance Fund based on medical information available to that agency. The medical documentation on which the determination is based may have been provided by the attending physician, by an evaluating physician or by a consulting physician.

Medical documentation will be required by management each time an employee is assigned to limited duty. Although the length of time the employee will be partially disabled is not an eligibility criterion for limited duty, management needs the expected full recovery date in order to design the limited duty assignment. Agencies may not approve limited duty assignments in blocks of time greater than 45 days, but based on the employee's prognosis, can assign shorter periods. While there are no restrictions on the number of times an employee can be assigned limited duty in blocks of 45 calendar days or less, agencies should extend additional periods of limited duty to employees in a uniform manner.

Each time a period of limited duty expires, the employee's medical status should be reviewed by management. This review will usually be based on the ongoing medical information provided by the employee during the limited duty assignment, but may involve another medical evaluation through the SIF if management is not satisfied with the available documentation. Based on this review, the employee will be returned to full duty, assigned an additional block of limited duty or returned to the appropriate leave status.

An employee assigned limited duty is returned to the payroll and is entitled to receive regular salary for the



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period of the limited duty assignment. Eligibility for added salary factors is the same as that for an employee performing full duties. In addition, time spent on a limited duty assignment counts as time served for the purpose of completing an employee's probationary period. Employees on limited duty assignments are in full-pay status and are eligible to earn biweekly leave accruals, observe holidays, earn holiday pay or time for work on a holiday and otherwise are to be treated, for attendance and leave purposes, as any other employee at work performing regular duties.

Employees who decline limited duty assignments will be placed on leave without pay and referred to the SIF for appropriate benefit determinations.

Employees who are not offered limited duty assignments continue on the workers' compensation leave benefits appropriate to their length of absence.

During a period of limited duty an employee will be expected to provide ongoing medical documentation at intervals specified by the appointing authority supporting his/her need for continuation of the limited duty assignment and will also be required to provide medical documentation attesting to full recovery before return to full duties.

B. Assignments

A limited duty assignment must reflect the employee's physical condition and be within the following parameters:

1. Limited duty assignments must be developed within the employee's title and current work location. Work location as used in this context is the existing definition of work location within each affected agency, not necessarily the exact location of the employee's bid job, but rather the geographic area within which employees bid on particular assignments. Work location policies for each agency/facility, as they relate to limited duty assignments, should be discussed at appropriate level labor/management meetings.
2. Employees on limited duty assignments may not be counted as part of minimum staffing levels. That



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is, an employee working limited duty cannot be counted as staff in management decisions concerning whether or not there are a sufficient number of employees available.

3. No employee will be bumped from a bid job or be required to work in any job other than his/her bid job to provide limited duty assignments. In other words, no employee at work performing his/her regular assignment can be displaced solely to create a spot for a person returning to work on limited duty.
4. No bid jobs will be abolished to create limited duty assignments. In other words, if an ongoing full-time regular assignment is vacated, for any reason, management cannot eliminate this position solely for the purpose of making the duties available to employees on limited duty. Of course, this has no impact on management's right to direct and deploy the work force as programmatic and/or operational needs change.
5. Seniority selection for resource assignments, where they exist by labor/management agreement, shall not be changed to accommodate limited duty assignments. Currently, agreements to establish such assignments exist only in the Department of Correctional Services.
6. Every effort will be made to maintain the employee's squad and shift when assigned to limited duty. If the employee's physical limitations are such that management is not able to develop an assignment on the same squad or shift, however, the employee should be given as much advance notice of the change as possible. In addition, if assignment to more than one squad or shift is possible, the employee's preference should be considered.

Items 3 and 4 above are subject to resolution under Article 7 of the collective bargaining agreements up to and including Step 3 of the grievance procedure.

Through a review of past workers' compensation experience, agencies may be able to develop an inventory of potential limited duty tasks that can be combined into an assignment once the employee's limitations are known.



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Management is certainly not limited, however, to such an inventory. Agencies are expected to make every effort to tailor each assignment to the individual employee's specific limitations. Once tasks that an employee can perform are identified, management needs to determine which tasks will be combined to establish an assignment for that individual. Some employees may perform only one task for their period of limited duty; others may be assigned a variety of tasks based on their physical limitations. It would be an unusual situation if a limited duty assignment corresponded to a regular assignment in the combination of tasks and length of the workday spent on each.

Since each limited duty assignment may be for 45 calendar days, management may design an assignment that changes over time. For example, an assignment may begin with training for a week or two and then progress to an assignment that is less sedentary for a second period of time and finally, to more physical tasks at the end of the period immediately prior to return to full duties. Assignments such as this should be explained to the employee upon return to limited duty. Management may also find it necessary to begin an assignment defined only for a portion of the 45 days, in order to return the employee to work as quickly as possible, with the understanding that the rest of the assignment would be developed and discussed with the employee prior to expiration of the initial time period.

When an employee is assigned limited duty, the following information should be provided:

- Description of the specific duties
- Location, work hours, workweek of the assignment
- The name of the supervisor, the starting and ending dates

In addition, employees should be advised that (1) limited duty assignments may be changed over the length of the assignment to reflect both changes in the employee's physical limitations as the rehabilitation process progresses and changes in the agencies needs and (2) limited duty assignments may be required for additional blocks of 45 days or less at agency discretion.

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Nothing in this policy diminishes management's right to have the employee examined by a physician selected by management as a condition of allowing the employee to return to full duties. Return to full duty at the end of a limited duty assignment is not automatic. An initial prognosis accepted by management of an employee's ability to perform full duties on a specific date does not prevent management from reconsideration should circumstances appropriately indicate.

C. Termination of Limited Duty Assignments

A limited duty assignment may be terminated prior to its expiration if it is determined, based on medical documentation satisfactory to management, that the employee is able to return to full duties earlier than the original prognosis had indicated. When the agency has medical documentation indicating full recovery, the employee should be ordered to return to full duties immediately. If the employee disputes management's finding of full recovery, the employee will be placed on leave without pay and the case will be referred to the State Insurance Fund and the Workers' Compensation Board.



# WORKERS' COMPENSATION BENEFIT ELECTION FORM

## New York State Council 82, NYSCOPBA or PBA of NYS Negotiated Agreements

To be completed by employee

**INSTRUCTIONS:** Please complete this form and submit it to your agency each time you file an accident report.

- Agency Police Services Unit
- Security Services Unit
- Security Supervisors Unit

Name	Social Security Number  X X X - X X - _ _ _ _ _
Street Address	Home Telephone Number
City or Post Office                      State      Zip Code	Date of Accident

I elect the following benefit program for all absences related to this accident:

1. **New York State Workers' Compensation Law Coverage only**  Yes  No  
 I understand that if I elect the Law coverage only I will be placed on leave without pay for all absences related to this accident and I will receive only the benefits provided by the New York State Workers' Compensation law.

2. **Workers' Compensation Leave Benefit Program**  Yes  No  
 I understand that if I elect the Leave Benefit Program, in addition to Law coverage, I will be eligible for the benefits as provided in the Council 82, NYSCOPBA or PBA of NYS negotiated agreements which include up to 6 months of paid leave, and use of credits and sick leave at half pay, if eligible. I also understand that to receive these benefits I must participate in the medical evaluation and limited duty components of this Program.

**PERSONAL PRIVACY PROTECTION LAW NOTIFICATION**

The information which you are being asked to provide on this form is being requested pursuant to Article 14 of the Council 82, NYSCOPBA or PBA of NYS negotiated agreements for the principal purpose of determining whether you qualify for employer-provided workers' compensation benefits and will be maintained by the Personnel Office in the agency or facility in which you are employed. Failure to provide this information may result in delay of processing benefits. This information will be used in accordance with Section 96 (1) of the personal Privacy Protection Law particularly subdivisions (b), (d), and (e). For further information relating only to the personal Privacy protection Law, contact your personnel Office.

Signature	Date
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## **WORKERS' COMPENSATION MEMORANDUM OF UNDERSTANDING**

### **Eligibility**

All employees who are claiming an occupational injury or disease may participate in a Medical Evaluation Program (MEP). The Medical Evaluation Program will be administered by the State Insurance Fund (SIF) unless a change in MEP administrator is mutually agreed upon. Only those opting not to participate in the MEP will be eligible to apply for the statutory Workers' Compensation benefits.

### **Benefit**

Only employees in the MEP will receive a maximum of six months of Workers' Compensation Leave (WCL) at full pay per disability (continuation of Article 14.9 language).

### **Medical Evaluation Program**

The MEP will consist of a Statewide Network of evaluating physicians. The evaluating physician will be responsible for determining the level of disability resulting from an occupational injury or disease as defined in the Workers' Compensation Law.

Physicians eligible to participate in the Network shall be identified by the MEP administrator.

All employees will be directed to report to the selected evaluating physician for a disability determination. Medical evaluations will only be scheduled for injuries or disease resulting in lost time.

Employees participating in MEP may be directed to report to an identified evaluating physician upon the request of the employing agency if:

1. The employee has lost time beyond two full work days after the date of an accident;
2. The initial medical prognosis by the employee's attending physician indicates that the employee's absence will last beyond six weeks;
3. The employee's prognosis indicates that the absence will be less than six weeks, but the employee does not return to work on the specified date; or
4. The agency has reason to believe that the employee may be eligible for limited light duty assignment because of the nature of the injury and/or the medical information received.

When appropriate, the evaluating physician will perform periodic examinations to determine the status of the employee's disability.

### **Joint Committee**

The State and NYSCOPBA agree to continue the standing Joint Committee on Workers' Compensation. The Committee shall consist of an equal number of representatives selected by NYSCOPBA and an equal number of representatives selected by the State.

The Joint Committee's areas of responsibility shall include, but not limited to, the following:

- Review of the MEP and its operation;
- Review the standard physical limitation form;
- Participate in the review of performance of evaluating physicians;
- Review the standards used by MEP and DRP physicians in determining level of disability;
- Review of issues of risk in the workplace in general and on an individual basis;
- Review the availability of benefits to employees who contract occupational diseases;
- Consideration of implementation of jointly agreed upon projects which are designed to reduce job-related accidents;
- Participate in joint educational conferences with the agencies and facilities including education and communication material for the MEP and DRP;
- Development of recommendations to improve safety in the workplace and related areas;
- Insure that all employees have ready access to evaluating physicians within their geographic location;
- If a mutually agreed upon change in vendor is made, the Joint Committee shall participate in the development of the RFP and the RFP process.

Light Duty

If the employee's level of disability is classified as 50% or less by the evaluating physician, the employee will be notified by the Employer to either report for light duty or remain on WCL at full pay. Those refusing a light duty assignment when offered will be eligible to apply for the statutory Workers' Compensation benefit. A Memorandum of Understanding describing the dispute resolution process is attached.

If the treating physician determines that the degree of disability of an employee on light duty exceeds 50 percent, the employing agency should schedule an MEP upon receipt of such notice from the treating physician.

All the light duty assignments will be within the employee's title and at the employee's work location. In cases where minimum staffing levels have been established, light duty will not be used to affect existing minimum staffing levels.

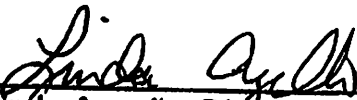
Light duty assignments will continue for the duration of the disability, or 45 days, whichever is less. Such light duty assignments may be extended with authorization of the evaluating physician and the approval of the agency.

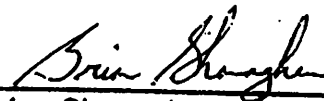
If no light duty assignment is available or if the light duty assignment expires, the employee will remain on WCL at full pay.

Light duty assignments will be identified and assigned by Management. The parameters of light duty assignments may be discussed pursuant to Article 25.4. Any problems which arise concerning light duty assignments will be addressed by the Joint Committee.

The six month entitlement to WCL excludes the entire period of light duty assignments.

Light duty programs are available to employees returning from sick leave. The employee may request the light duty program and it will be granted at Management's discretion.

  
\_\_\_\_\_  
Linda Angello, Director  
For the State of New York

  
\_\_\_\_\_  
Brian Shanagher, President  
For NYSCOPBA

Dated: May 18, 2000

Dated: MAY 18, 2000

Policy / Procedures | Executive Communication | Executive Memorandum

<b>Executive Memorandum 2009</b>		<b>EM #09-17</b>
<b>Subject:</b>	Modified Duty	Issued: 05-19-09
<b>From:</b>	Deputy Superintendent Francis P. Christensen, Employee Relations	
<b>Attn:</b>	All Members	
<p>Reference <u>Executive Memorandum #09-15</u>, Heightened Risk/Modified Duty, issued 05/08/09.</p> <p>On April 2, 2009, the New York State Police and the Police Benevolent Association of the New York State Troopers, Inc., (PBA), signed a Memorandum of Agreement covering both the Troopers' Unit and the Supervisors' Unit of the PBA delineating the terms and conditions of a Heightened Risk Disability Benefit and Modified Duty Policy. On May 6, 2009, the Division signed an identical agreement with the New York State Police Investigators Association covering Investigators and Senior Investigators. The Superintendent has also extended the Modified Duty Program to Members of the Division who are designated as Management Confidential.</p> <p>As a result, all sworn Members of the State Police are eligible for assignment to modified duty if qualified as a result of an off-duty or on-duty injury/illness.</p> <p>When a Member's degree of disability is classified as fifty percent (50%) or less (mildly or moderately disabled), the Member may qualify for an assignment to modified duty. The Division will use the information provided on this form to design a modified duty assignment that is consistent with the Member's physical limitations and capabilities. If a Member is determined to be fifty percent (50%) or less disabled by a State Insurance Fund Physician, the State Insurance Fund Physician will complete the Estimated Physical Capabilities Form (Pers. 51) and will forward it with a narrative report to the Division Physician for review. If a Member is requesting assignment to the Modified Duty Program based on a determination by the Member's attending physician that the Member is fifty percent (50%) or less disabled, a completed Estimated Physical Capabilities Form (Pers. 51) should accompany the Member's memorandum requesting assignment to modified duty for review by the Division Physician.</p> <p>Modified duty assignments will run for the duration of the disability, or ninety (90) calendar days, whichever is less. All modified duty assignments will be reviewed at the end of each assignment period and any approved extension to a subsequent block of modified duty will be subject to the same limitations.</p> <p>While assigned to modified duty, Members will be required to cooperate fully in all aspects of the program. This includes, but shall not be limited to, attendance at scheduled medical appointments and providing relevant medical records or other relevant documentation as required. Failure to cooperate may result in discontinuation of the Member's assignment to modified duty.</p> <p>A Member who wishes to contest a degree of disability determination should refer to the Dispute Resolution Program as contained in the above-referenced MOA and the associated Frequently Asked Questions (FAQ)/Instructions document.</p> <p>The Pers. 51 can be printed from Division Intranet.</p>		

Policy / Procedures | Executive Communication | Executive Memorandum

<b>Executive Memorandum 2009</b>		<b>EM #09-15</b>
<b>Subject:</b>	Heightened Risk/Modified Duty	Issued: 05-11-09
<b>From:</b>	Deputy Superintendent Francis P. Christensen, Employee Relations	
<b>To:</b>	All Members	
<p>Division has recently signed Memorandums of Agreement (MOA) with both the Police Benevolent Association (PBA) and New York State Investigators' Association (NYSPIA) that establishes a Heightened Risk Disability Benefit and Modified Duty Policy for all Members.</p> <p>The Heightened Risk Disability Benefit provides a Member who is unable to work due to an on-duty injury or illness, upon a determination by the Superintendent to have resulted from circumstances above and beyond a Member's routine daily duties, with full pay and fringe benefits during the period of absence. These benefits will continue until the Member: 1) receives a New York State Police Accidental Disability Retirement; or 2) becomes eligible for a New York State Police service retirement with full benefits (twenty (20) years of State Police service credit); or 3) reaches his/her applicable mandatory retirement age under New York State Law; or 4) is deemed capable of returning to full and strenuous duty; or 5) refuses a modified duty assignment, whichever occurs first. To apply for this benefit, the affected Member must submit a written request to the Deputy Superintendent – Employee Relations, in accordance with the terms set forth in the MOA.</p> <p>The Modified Duty Policy enables a Member recovering from an on-duty or off-duty illness/injury who is determined to be fifty percent (50%) or less disabled, under specified conditions, to work in a modified duty assignment. A request that a Member be assigned to Modified Duty can be made by either the Member or Division. In addition to expanding Division's previous Modified Duty Policy to include Members of the Troopers' Unit of the PBA, other changes and amendments to the initial agreement have been made and are described in the new MOA.</p> <p>The subject MOAs have been posted on the Division Intranet and can be accessed at <a href="http://nyspolice/Personnel/Benefits/Heightened_Risk/">http://nyspolice/Personnel/Benefits/Heightened_Risk/</a>. All Members should read the MOA that covers their respective bargaining unit in its entirety as there are prerequisites, established qualifying criteria and deadlines associated with both the Heightened Risk Disability Benefit and the Modified Duty Policy. Questions concerning this policy should be referred to Employee Relations at (518) 457-3572.</p>		

**MEMORANDUM OF AGREEMENT**

**By and Between**

**The Police Benevolent Association of the  
New York State Troopers, Inc.**

**And**

**The State of New York, Division of State Police**

**April 2, 2009**

**WHEREAS**, the Police Benevolent Association of the New York State Troopers, Inc. ("PBA") and State of New York, Division of State Police ("Division") are parties to an August 16, 2008, Memorandum of Agreement ("MOA") regarding terms for a Collective Bargaining Agreement dated April 1, 2007, to March 31, 2011, for the bargaining unit consisting of those employees of the Division holding the rank of Trooper ("Troopers' Unit") and an August 16, 2008, Memorandum of Agreement ("MOA") regarding terms for a Collective Bargaining Agreement dated April 1, 2007, to March 31, 2011, for the bargaining unit consisting of those employees of the Division of State Police who are Commissioned and Non-Commissioned Officers ("Supervisors' Unit").

**WHEREAS**, paragraph 14 of the Troopers' Unit MOA and paragraph 15 of the Supervisors' Unit MOA each set forth that the parties will establish a Labor/Management Committee for the purpose of developing a benefit for certain on-the-job injuries.

**WHEREAS**, the parties have established the Labor/Management Committee and that the Committee has met and discussed the issues associated with developing a benefit for certain on-the-job injuries and the creation of a Modified Duty Policy applicable to both the Troopers' and Supervisors' Units.

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WHEREAS, the PBA, the State and the Division have reached an agreement that is satisfactory to all parties and desire to reduce said agreement to writing;

NOW, therefore in consideration of the mutual premises contained herein, it is hereby stipulated and agreed as follows:

**Heightened Risk Disability Benefit**

1. The Heightened Risk Disability Benefit will apply only to on-duty illnesses/injuries resulting from circumstances above and beyond a Member's routine daily duties.
2. Upon written request by a Member to the Deputy Superintendent – Employee Relations to receive the Heightened Risk Disability Benefit as a result of an on-duty illness/injury, the Superintendent shall determine, on a case-by-case basis, whether the Member's on-duty illness/injury falls within the Heightened Risk Category.
3. A Member, who is unable to work due to an on-duty injury/illness that is determined by the Superintendent to be in the Heightened Risk Category, will be entitled to the Heightened Risk Disability Benefit, and thus will continue to receive full pay and fringe benefits during the period of absence until the Member: 1) receives a New York State Police accidental disability retirement (RSSL §363-bb); or 2) becomes eligible for a New York State Police service retirement with full benefits (currently, twenty (20) years of State Police service credit); or 3) reaches his/her applicable mandatory retirement age under New York State law; or 4) is deemed capable of returning to full and strenuous duty; or 5) refuses a modified duty assignment as described in paragraph 6 below, whichever occurs first.
4. The Division or the Member may file for disability retirement on behalf of the

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Member at any time. The Division reserves the right to file on behalf of the Member without his/her consent.

5. A Member who is eligible to receive the Heightened Risk Disability Benefit shall be required to work in a modified duty assignment if he/she is determined to be fifty percent (50%) or less disabled in accordance with the terms and provisions of the Modified Duty Program as set forth herein.

6. If the Member is determined to be fifty percent (50%) or less disabled in accordance with the terms of the Modified Duty Program, and refuses the assignment to modified duty, he/she shall not be eligible to receive full pay and fringe benefits pursuant to the Heightened Risk Disability Benefit.

7. If the Member is determined to be greater than fifty percent (50%) disabled in accordance with the terms of the Modified Duty Program, he/she shall not be required to work in a modified duty assignment and shall continue to receive full pay and fringe benefits under the Heightened Risk Disability Benefit subject to the terms set forth in paragraph 3 above.

8. The Superintendent's determination that an on-duty injury/illness does not fall within the Heightened Risk Category will be issued in writing to the PBA and the Member and shall be subject to appeal by the Member upon written notification to the Deputy Superintendent – Employee Relations within ten (10) calendar days of his/her receipt of the Superintendent's written determination. Such appeal shall be reviewable by a three (3) person panel that shall be referred to as the Heightened Risk Determination Review Panel ("Panel"). The Panel shall consist of one (1) representative appointed by the Division, one (1) representative appointed by the PBA and one (1) representative

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appointed by the Director of the Governor's Office of Employee Relations.

9. Upon proper written appeal by the Member as set forth in paragraph 8 above, the Panel shall schedule the date for a hearing in furtherance of its review of the Superintendent's determination on Heightened Risk categorization within twenty (20) calendar days of receipt of the written request to the Deputy Superintendent – Employee Relations. After reviewing the particular facts and circumstances of the matter, prior Heightened Risk determinations, documentary evidence, testimony, and/or other submissions by the parties, the Panel shall issue a binding written decision based on a majority vote of the Panel members within ten (10) calendar days of the hearing date.

10. Pending the Panel's decision, the Member shall be subject to the Division's normal Workers' Compensation procedures and benefits.

#### Modified Duty Policy

11. Modified Duty Generally. The parties recognize that the traditional policy of requiring a Member to be fit for full and strenuous duty may create a hardship for the Division and a Member who is fit for partial duty, but nonetheless, is not permitted to work. This can result in substantial depletion of a Member's accruals and deprive the Division of the Member's services. Assignment of the Member to Modified Duty will alleviate the impact of the absence on the Member and on the Division.

12. Qualifications for Consideration. It is the policy of the Division to permit and assign a Member recovering from either an on-duty or off-duty illness/injury to a modified duty assignment when such Member meets the criteria for such assignment as set forth herein and the Division's best interests are served. However, modified duty

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assignments are not designed nor intended to be long-term in duration.

13. Modified Duty Assignments. Modified Duty shall consist of assignments as available and as designated by the Division, including but not limited to, administrative duties, desk duty, records management, inventory control, investigations not requiring field work, communications, and other non-patrol functions.

14. Assignment to Modified Duty. A Member who is approved for assignment to modified duty shall be assigned to report for such duty by the Deputy Superintendent – Employee Relations or his/her designee.

15. Assignment – Schedule. Members assigned to modified duty will be scheduled to work an eight (8) hour work schedule or a twelve (12) hour work schedule at the discretion of the Troop or Detail Commander, subject to the terms set forth in Article 12 of the parties' collective bargaining agreement.

16. Assignment - Limitations. Members working in a modified duty capacity shall not be eligible for assignment to overtime details, normal road patrol, criminal investigations requiring field work, or field supervisory coverage. Absent an emergency, Members working in a modified duty capacity shall not be assigned to work overtime. Any overtime that is assigned to a Member working in a modified duty assignment requires prior approval by the Troop/Detail Commander. The Troop/Detail Commander shall provide notice of all overtime incurred pursuant to this paragraph to the Deputy Superintendent – Employee Relations.

17. Limitations – Location of Assignment. The Division shall have the sole right to determine the location of a modified duty assignment and will make every reasonable effort to assign the Member as close to his/her official duty station as possible. A

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Member shall not be assigned more than fifty-five (55) miles from his/her official duty station without his/her consent. However, the Division shall not be required to assign a Member to any location where there is insufficient work. A Member assigned more than thirty-five (35) miles from his/her official duty station will be entitled to mileage or sustenance in accordance with Articles 2 and 10 of the New York State Police Administrative Manual, and as otherwise provided for in accordance with law, rule, regulation or collective bargaining agreement.

18. Limitations – Duration of Modified Duty Generally. With the exception of a Member receiving the Heightened Risk Disability Benefit, a Member may not work in a modified duty capacity for more than five hundred forty (540) calendar days in any three (3) year period. This time period limitation shall begin on the first day of the Member's modified duty assignment and shall apply in instances of single or multiple illnesses/injuries, regardless of whether the illnesses/injuries result from the same or different events/circumstances. Upon written request by the Member, the Superintendent may, in his sole discretion, determine to extend the time limitation on modified duty assignments as set forth herein.

19. Assignment – Out-of-Title Work. There shall be no grievances alleging out-of-title work filed or processed in association with any modified duty assignment.

20. Assignment – Attire. The Troop/Detail Commander shall determine whether the Member in a modified duty assignment will wear his/her uniform or appropriate business attire while on duty.

21. Remedies. A determination regarding a Member's degree of disability or eligibility for modified duty, including determinations made regarding a Member's

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eligibility to receive the Heightened Risk Disability Benefit, shall not be subject to the Article 15 Grievance Process whether contract or non-contract. A dispute regarding the application or interpretation of a term of this Memorandum of Agreement will be subject to the Article 15 Grievance Process as a non-contract grievance.

22. Outside Employment. A Member assigned to modified duty must request approval to engage in outside employment pursuant to Article 8H of the New York State Police Administrative Manual. This requirement applies to both previously approved and new outside employment requests.

23. Promotion While on Modified Duty. A Member on modified duty shall not be precluded from promotional appointment from an eligible list, or from any other promotional opportunity, if there is a medical certification from the Division Physician and the Member's physician that the Member is expected to return to full and strenuous duty within thirty (30) calendar days of the date of promotion. In the event that the Member is promoted under the terms of this paragraph, but does not return to full and strenuous duty within thirty (30) calendar days of promotion, the Division reserves the right to return the Member to his/her previous rank, however, where the promotion is made from a promotional list, the Member will not lose his/her position on that list.

24. Member's Cooperation. A Member subject to any of the provisions herein shall cooperate fully in all aspects of the process. This includes, but shall not be limited to, attendance at scheduled medical appointments and providing relevant medical records or other relevant documentation as required. Failure to cooperate may result in discontinuation of the Member's assignment to modified duty and/or loss of eligibility under the Heightened Risk Disability Benefit.

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Modified Duty Provisions for On-Duty Illnesses/Injuries

25. Level of Fitness. To be considered for assignment to modified duty, a Member recovering from an on-duty illness/injury, including a Member receiving the Heightened Risk Disability Benefit, must be found to be fifty percent (50%) or less disabled by the State Insurance Fund or his/her attending physician, and the Division Physician must concur with that determination.

26. Requesting Modified Duty. For a Member recovering from an on-duty illness/injury, including a Member receiving the Heightened Risk Disability Benefit, either the Member or the Division can request that the Member be assigned to modified duty. In either event, the request shall be referred to the Division Physician for review. If the Division is making the request, and the Division Physician determines that such assignment is proper, the matter may be referred to the State Insurance Fund for a degree of disability determination. If the State Insurance Fund determines that the Member is fifty percent (50%) or less disabled, and all other criteria are met as set forth herein, and upon final approval of the Division, the Member shall be assigned to modified duty. If the Member is making the request, he/she may submit written certification from his/her health care provider/attending physician that he/she is fifty percent (50%) or less disabled. Such request and determination shall be submitted to the Division Physician for review. If the Division Physician concurs with the Member's health care provider/attending physician, and all other criteria are met as set forth herein, and upon final approval of the Division, the Member shall be assigned to modified duty.

27. Review Procedure. In furtherance of the Division Physician's review of each

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request as set forth in paragraph 26 above, he/she may direct that additional relevant information be obtained from the Member's health care provider/attending physician prior to making a determination. Upon final medical determination by the Division Physician, the Superintendent shall have the sole authority to determine a Member's modified duty eligibility for on-duty illnesses/injuries. A Member who wishes to contest a modified duty eligibility determination based on the degree of disability determination by the State Insurance Fund, may do so by utilizing the Dispute Resolution Process set forth in paragraph 29 below.

28. Limitations – Duration of Assignment. All approved modified duty assignments will run for the duration of the disability, or ninety (90) calendar days, whichever is less ("Assignment Period"). All modified duty assignments will be reviewed at the end of each Assignment Period and any approved extension to a subsequent Assignment Period will be subject to the same time limitations. The Superintendent shall determine whether or not to approve an extension to a subsequent assignment period and, when necessary, will refer the matter to the Division Physician for further review and medical recommendation. Should the Division Physician determine that additional medical information is required prior to making a recommendation to the Superintendent, appropriate arrangements shall be made to obtain such medical information and/or to schedule a medical examination by a State Insurance Fund Physician. For a Member recovering from an on-duty illness/injury only, the expense of such examination shall be at State expense.

29. Dispute Resolution Process Generally. A Member who wishes to contest a modified duty eligibility determination based on the degree of disability determination by

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the State Insurance Fund, may do so by using the Dispute Resolution Process. The Dispute Resolution Process shall consist of a review of the relevant medical documentation by an independent third party medical consultant retained by the Division upon submission of relevant documentation by the parties.

30. Dispute Resolution Process - Appeals. A Member recovering from an on-duty illness/injury, including a Member receiving the Heightened Risk Disability Benefit, who wishes to contest a modified duty determination as described in paragraph 29 above must submit his/her appeal to the Deputy Superintendent - Employee Relations by memorandum through channels within five (5) calendar days of the date that the Member receives notice in writing of the modified duty determination.

31. Dispute Resolution Process - Third Party Review. A Member contesting a modified duty determination as described in paragraph 29 above must also provide an appeal form to his/her attending physician. The Member's attending physician must complete the form and submit it to the third party consultant, along with any medical records deemed relevant in support of the attending physician's opinion with regard to the Member's degree of disability, within ten (10) calendar days of the date that the Member receives notice in writing of the modified duty determination. The Division and the State Insurance Fund shall also provide the third party consultant with the necessary medical documentation to support their degree of disability determination within ten (10) calendar days of receipt of the Member's memorandum contesting assignment to modified duty. A Member appealing a modified duty determination shall not be required to report for a modified duty assignment until completion of the Dispute Resolution Process. A Member who appeals a modified duty determination, and does not

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report for a modified duty assignment, will be removed from Workers' Compensation leave during the appeal process. The Member may use any accumulated sick, annual or personal leave accruals for such absence. In the event that the third party consultant finds the Member is fifty percent (50%) or less disabled and is eligible for modified duty or continuing in a modified duty assignment, the Member shall be assigned to modified duty by the Division as soon as practicable. In the event that the third party consultant finds that no disability exists, the Member will be ordered to return to full duty. If the Member then refuses to return to duty after a finding by the third party consultant that the Member is fifty percent (50%) or less disabled or that there is no disability, the Division will direct the State Insurance Fund to pay the Member directly for any Workers' Compensation benefits the Member is entitled to and the Member may continue to charge accumulated accruals. In the event that the third party consultant finds that the Member is greater than fifty percent (50%) disabled, the assignment shall be rescinded and any accruals used by the Member during the appeal process shall be restored. In such case, the Member shall be entitled to leave under Regulation 5.12 of the State Police Administrative Manual or, if applicable based on a prior determination by the Superintendent as set forth above, to benefits under the Heightened Risk Disability Benefit.

32. Leave Entitlement. A Member on modified duty as a result of an on-duty injury, including a Member receiving the Heightened Risk Disability Benefit, shall not be charged with use of Compensation Leave except where otherwise provided for herein. In addition, such Member shall not have his/her leave accruals charged for work time spent performing his/her modified duty assignment, but shall be charged with accruals for any authorized leave.

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**Modified Duty Provisions for Off-Duty Illnesses/Injuries**

33. **Level of Fitness.** To be considered for assignment to modified duty, a Member recovering from an off-duty illness/injury must present certification from his/her health care provider/attending physician indicating that he/she is fifty percent (50%) or less disabled, and the Division Physician must concur with that determination.
34. **Requesting Modified Duty.** A Member recovering from an off-duty illness/injury may request assignment to modified duty by memorandum through channels. The Member must include with this memorandum written certification from his/her health care provider/attending physician that he/she is fifty percent (50%) or less disabled and has the ability to perform those modified duty assignments as set forth in paragraph 13 above. Such request shall be reviewed by the Division Physician in furtherance of his/her final medical determination. Any expense incurred in connection with this process shall be the Member's responsibility.
35. **Review Procedure.** In furtherance of the Division Physician's review of each request as set forth in paragraph 34 above, he/she may direct that additional relevant information be obtained from the Member's health care provider/attending physician prior to making a determination. Upon final medical determination by the Division Physician, the Superintendent shall have the sole authority to determine a Member's modified duty eligibility for off-duty illnesses/injuries. A Member who wishes to contest a modified duty eligibility determination based on the degree of disability determination by the Division Physician, may do so by utilizing the Dispute Resolution Process set forth in paragraph 37 below.

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36. Limitations – Duration of Assignment. All approved modified duty assignments will run for the duration of the disability, or ninety (90) calendar days, whichever is less (“Assignment Period”). All modified duty assignments will be reviewed at the end of each Assignment Period and any approved extension to a subsequent Assignment Period will be subject to the same time limitations. The Superintendent shall determine whether or not to approve an extension to a subsequent assignment period and, when necessary, will refer the matter to the Division Physician for further review and medical recommendation. Should the Division Physician determine that additional medical information is required prior to making a recommendation to the Superintendent, appropriate arrangements shall be made to obtain such medical information and/or to schedule an independent medical examination. The cost of this examination shall be the responsibility of the Member.
37. Dispute Resolution Process Generally. A Member who wishes to contest a modified duty eligibility determination based on the degree of disability determination by the Division Physician, may do so by using the Dispute Resolution Process. The Dispute Resolution Process shall consist of a review of the relevant medical documentation by an independent third party medical consultant retained by the Division upon submission of relevant documentation by the parties.
38. Dispute Resolution Process - Appeals. A Member recovering from an off-duty illness/injury who wishes to contest a modified duty determination as described in paragraph 37 above must submit his/her appeal to the Deputy Superintendent – Employee Relations by memorandum through channels within five (5) calendar days of the date that the Member receives notice in writing of the modified duty determination.

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39. Dispute Resolution Process – Third Party Review. A Member who wishes to contest a modified duty determination concerning an off-duty illness/injury shall also have the right to use the Dispute Resolution Process as outlined in paragraph 37 above. If a Member appeals a modified duty determination through the Dispute Resolution Process, the Member shall not be entitled to report for duty until the Dispute Resolution Process is complete. In the event that the third party consultant determines that the Member is fifty percent (50%) or less disabled, the Member will be assigned to modified duty as soon as practicable and any leave accruals that the Member used while awaiting a determination from the Dispute Resolution Process will be restored. If the third party consultant finds that the Member is greater than fifty percent (50%) disabled and incapable of performing modified duty, the Member shall remain on sick leave. After a minimum of thirty (30) calendar days has elapsed from the date of the third party consultant's determination, the Member may submit additional medical documentation through channels to the Division Physician and again request assignment to modified duty.

40. Leave Entitlement. A Member on modified duty as a result of an off-duty injury shall not have his/her leave accruals charged for work time spent performing his/her modified duty assignment, but shall be charged with accruals for any authorized leave.

Miscellaneous Terms

41. Contractual Terms. Unless specifically modified herein, the terms of the parties' Collective Bargaining Agreement remain in full force and effect.

42. Right to Reopen. In the event the Division negotiates an enhancement to any

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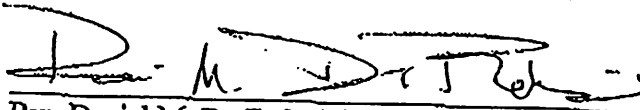
benefit contained herein for Members of the Division not represented by the PBA, the parties agree to reopen negotiations and make any necessary modifications to the terms of this MOA.

43. Term of Agreement. Unless renewed by mutual agreement, this Agreement shall terminate on March 31, 2011.

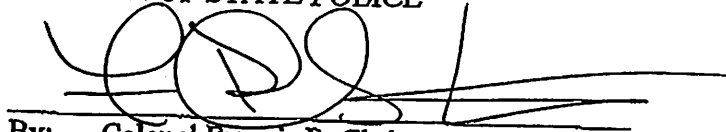
44. Effective Date. This Agreement shall take effect on April 2, 2009.

IN WITNESS WHEREOF, the parties hereto have caused this MOA to be signed in their respective names by their respective representatives thereunto duly authorized.

THE POLICE BENEVOLENT ASSOCIATION  
OF THE NEW YORK STATE TROOPERS, INC.

  
By: Daniel M. De Federicis, President

STATE OF NEW YORK,  
DIVISION OF STATE POLICE

  
By: Colonel Francis P. Christensen  
Deputy Superintendent

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**MEMORANDUM OF AGREEMENT**

**By and Between**

**New York State Police Investigators Association**

**And**

**The State of New York, Division of State Police**

**May 6, 2009**

**WHEREAS**, the New York State Police Investigators Association ("NYSPIA") and State of New York, Division of State Police ("Division") are parties to a November 6, 2008, Memorandum of Agreement ("MOA") regarding terms for a Collective Bargaining Agreement dated April 1, 2007, to March 31, 2011, for the bargaining unit consisting of those employees of the Division holding the rank of Investigator and Senior Investigator ("Members").

**WHEREAS**, paragraph 15 of the MOA sets forth that the parties will establish a Labor/Management Committee for the purpose of developing a benefit for certain on-the-job injuries.

**WHEREAS**, the parties have established the Labor/Management Committee and that the Committee has met and discussed the issues associated with developing a benefit for certain on-the-job injuries and the creation of a Modified Duty Policy applicable to Investigators and Senior Investigators.

**WHEREAS**, NYSPIA, the State and the Division have reached an agreement that is satisfactory to all parties and desire to reduce said agreement to writing;

**NOW**, therefore in consideration of the mutual premises contained herein, it is hereby stipulated and agreed as follows:

**Heightened Risk Disability Benefit**

1. The Heightened Risk Disability Benefit will apply only to on-duty illnesses/injuries resulting from circumstances above and beyond a Member's routine daily duties.

2. Upon written request by a Member to the Deputy Superintendent – Employee Relations to receive the Heightened Risk Disability Benefit as a result of an on-duty illness/injury, the Superintendent shall determine, on a case-by-case basis, whether the Member's on-duty illness/injury falls within the Heightened Risk Category.

3. A Member, who is unable to work due to an on-duty injury/illness that is determined by the Superintendent to be in the Heightened Risk Category, will be entitled to the Heightened Risk Disability Benefit, and thus will continue to receive full pay and fringe benefits during the period of absence until the Member: 1) receives a New York State Police accidental disability retirement (RSSL §363-bb); or 2) becomes eligible for a New York State Police service retirement with full benefits (currently, twenty (20) years of State Police service credit); or 3) reaches his/her applicable mandatory retirement age under New York State law; or 4) is deemed capable of returning to full and strenuous duty; or 5) refuses a modified duty assignment as described in paragraph 6 below, whichever occurs first.

4. The Division or the Member may file for disability retirement on behalf of the Member at any time. The Division reserves the right to file on behalf of the Member without his/her consent.

5. A Member who is eligible to receive the Heightened Risk Disability Benefit shall be required to work in a modified duty assignment if he/she is determined to be fifty

percent (50%) or less disabled in accordance with the terms and provisions of the Modified Duty Program as set forth herein.

6. If the Member is determined to be fifty percent (50%) or less disabled in accordance with the terms of the Modified Duty Program, and refuses the assignment to modified duty, he/she shall not be eligible to receive full pay and fringe benefits pursuant to the Heightened Risk Disability Benefit.

7. If the Member is determined to be greater than fifty percent (50%) disabled in accordance with the terms of the Modified Duty Program, he/she shall not be required to work in a modified duty assignment and shall continue to receive full pay and fringe benefits under the Heightened Risk Disability Benefit subject to the terms set forth in paragraph 3 above.

8. The Superintendent's determination that an on-duty injury/illness does not fall within the Heightened Risk Category will be issued in writing to NYSPIA and the Member and shall be subject to appeal by the Member upon written notification to the Deputy Superintendent – Employee Relations within ten (10) calendar days of his/her receipt of the Superintendent's written determination. Such appeal shall be reviewable by a three (3) person panel that shall be referred to as the Heightened Risk Determination Review Panel ("Panel"). The Panel shall consist of one (1) representative appointed by the Division, one (1) representative appointed by NYSPIA and one (1) representative appointed by the Director of the Governor's Office of Employee Relations.

9. Upon proper written appeal by the Member as set forth in paragraph 8 above, the Panel shall schedule the date for a hearing in furtherance of its review of the Superintendent's determination on Heightened Risk categorization within twenty (20)

calendar days of receipt of the written request to the Deputy Superintendent – Employee Relations. After reviewing the particular facts and circumstances of the matter, prior Heightened Risk determinations, documentary evidence, testimony, and/or other submissions by the parties, the Panel shall issue a binding written decision based on a majority vote of the Panel members within ten (10) calendar days of the hearing date.

10. Pending the Panel's decision, the Member shall be subject to the Division's normal Workers' Compensation procedures and benefits.

#### **Modified Duty Policy**

11. **Modified Duty Generally.** The parties recognize that the traditional policy of requiring a Member to be fit for full and strenuous duty may create a hardship for the Division and a Member who is fit for partial duty, but nonetheless, is not permitted to work. This can result in substantial depletion of a Member's accruals and deprive the Division of the Member's services. Assignment of the Member to Modified Duty will alleviate the impact of the absence on the Member and on the Division.

12. **Qualifications for Consideration.** It is the policy of the Division to permit and assign a Member recovering from either an on-duty or off-duty illness/injury to a modified duty assignment when such Member meets the criteria for such assignment as set forth herein and the Division's best interests are served. However, modified duty assignments are not designed nor intended to be long-term in duration.

13. **Modified Duty Assignments.** Modified Duty shall consist of assignments as available and as designated by the Division, including but not limited to, administrative duties, desk duty, records management, inventory control, investigations not requiring



field work, communications, and other non-patrol functions.

14. Assignment to Modified Duty. A Member who is approved for assignment to modified duty shall be assigned to report for such duty by the Deputy Superintendent – Employee Relations or his/her designee.

15. Assignment – Schedule. Members assigned to modified duty will be scheduled to work an eight (8) hour work schedule at the discretion of the Troop or Detail Commander, subject to the terms set forth in Article 12 of the parties' collective bargaining agreement.

16. Assignment - Limitations. Members working in a modified duty capacity shall not be eligible for assignment to overtime details, normal road patrol, criminal investigations requiring field work, or field supervisory coverage. Absent an emergency, Members working in a modified duty capacity shall not be assigned to work overtime. Any overtime that is assigned to a Member working in a modified duty assignment requires prior approval by the Troop/Detail Commander. The Troop/Detail Commander shall provide notice of all overtime incurred pursuant to this paragraph to the Deputy Superintendent – Employee Relations.

17. Limitations – Location of Assignment. The Division shall have the sole right to determine the location of a modified duty assignment and will make every reasonable effort to assign the Member as close to his/her official duty station as possible. A Member shall not be assigned more than fifty-five (55) miles from his/her official duty station without his/her consent. However, the Division shall not be required to assign a Member to any location where there is insufficient work. A Member assigned more than thirty-five (35) miles from his/her official duty station will be entitled to mileage or

sustenance in accordance with Articles 2 and 10 of the New York State Police Administrative Manual, and as otherwise provided for in accordance with law, rule, regulation or collective bargaining agreement.

18. Limitations – Duration of Modified Duty Generally. With the exception of a Member receiving the Heightened Risk Disability Benefit, a Member may not work in a modified duty capacity for more than five hundred forty (540) calendar days in any three (3) year period. This time period limitation shall begin on the first day of the Member's modified duty assignment and shall apply in instances of single or multiple illnesses/injuries, regardless of whether the illnesses/injuries result from the same or different events/circumstances. Upon written request by the Member, the Superintendent may, in his sole discretion, determine to extend the time limitation on modified duty assignments as set forth herein.

19. Assignment – Out-of-Title Work. There shall be no grievances alleging out-of-title work filed or processed in association with any modified duty assignment.

20. Assignment – Attire. A Member in a modified duty assignment will wear appropriate business attire while on duty.

21. Remedies. A determination regarding a Member's degree of disability or eligibility for modified duty, including determinations made regarding a Member's eligibility to receive the Heightened Risk Disability Benefit, shall not be subject to the Article 15 Grievance Process whether contract or non-contract. A dispute regarding the application or interpretation of a term of this Memorandum of Agreement will be subject to the Article 15 Grievance Process as a non-contract grievance.

22. Outside Employment. A Member assigned to modified duty must request

approval to engage in outside employment pursuant to Article 8H of the New York State Police Administrative Manual. This requirement applies to both previously approved and new outside employment requests.

23. Promotion While on Modified Duty. A Member on modified duty shall not be precluded from promotional appointment from an eligible list, or from any other promotional opportunity, if there is a medical certification from the Division Physician and the Member's physician that the Member is expected to return to full and strenuous duty within thirty (30) calendar days of the date of promotion. In the event that the Member is promoted under the terms of this paragraph, but does not return to full and strenuous duty within thirty (30) calendar days of promotion, the Division reserves the right to return the Member to his/her previous rank, however, where the promotion is made from a promotional list, the Member will not lose his/her position on that list.

24. Member's Cooperation. A Member subject to any of the provisions herein shall cooperate fully in all aspects of the process. This includes, but shall not be limited to, attendance at scheduled medical appointments and providing relevant medical records or other relevant documentation as required. Failure to cooperate may result in discontinuation of the Member's assignment to modified duty and/or loss of eligibility under the Heightened Risk Disability Benefit.

#### Modified Duty Provisions for On-Duty Illnesses/Injuries

25. Level of Fitness. To be considered for assignment to modified duty, a Member recovering from an on-duty illness/injury, including a Member receiving the Heightened Risk Disability Benefit, must be found to be fifty percent (50%) or less disabled by the

State Insurance Fund or his/her attending physician, and the Division Physician must concur with that determination.

26. Requesting Modified Duty. For a Member recovering from an on-duty illness/injury, including a Member receiving the Heightened Risk Disability Benefit, either the Member or the Division can request that the Member be assigned to modified duty. In either event, the request shall be referred to the Division Physician for review. If the Division is making the request, and the Division Physician determines that such assignment is proper, the matter may be referred to the State Insurance Fund for a degree of disability determination. If the State Insurance Fund determines that the Member is fifty percent (50%) or less disabled, and all other criteria are met as set forth herein, and upon final approval of the Division, the Member shall be assigned to modified duty. If the Member is making the request, he/she may submit written certification from his/her health care provider/attending physician that he/she is fifty percent (50%) or less disabled. Such request and determination shall be submitted to the Division Physician for review. If the Division Physician concurs with the Member's health care provider/attending physician, and all other criteria are met as set forth herein, and upon final approval of the Division, the Member shall be assigned to modified duty.

27. Review Procedure. In furtherance of the Division Physician's review of each request as set forth in paragraph 26 above, he/she may direct that additional relevant information be obtained from the Member's health care provider/attending physician prior to making a determination. Upon final medical determination by the Division Physician, the Superintendent shall have the sole authority to determine a Member's modified duty eligibility for on-duty illnesses/injuries. A Member who wishes to contest

a modified duty eligibility determination based on the degree of disability determination by the State Insurance Fund, may do so by utilizing the Dispute Resolution Process set forth in paragraph 29 below.

28. Limitations – Duration of Assignment. All approved modified duty assignments will run for the duration of the disability, or ninety (90) calendar days, whichever is less (“Assignment Period”). All modified duty assignments will be reviewed at the end of each Assignment Period and any approved extension to a subsequent Assignment Period will be subject to the same time limitations. The Superintendent shall determine whether or not to approve an extension to a subsequent assignment period and, when necessary, will refer the matter to the Division Physician for further review and medical recommendation. Should the Division Physician determine that additional medical information is required prior to making a recommendation to the Superintendent, appropriate arrangements shall be made to obtain such medical information and/or to schedule a medical examination by a State Insurance Fund Physician. For a Member recovering from an on-duty illness/injury only, the expense of such examination shall be at State expense.

29. Dispute Resolution Process Generally. A Member who wishes to contest a modified duty eligibility determination based on the degree of disability determination by the State Insurance Fund, may do so by using the Dispute Resolution Process. The Dispute Resolution Process shall consist of a review of the relevant medical documentation by an independent third party medical consultant retained by the Division upon submission of relevant documentation by the parties.

30. Dispute Resolution Process - Appeals. A Member recovering from an on-duty

illness/injury, including a Member receiving the Heightened Risk Disability Benefit, who wishes to contest a modified duty determination as described in paragraph 29 above must submit his/her appeal to the Deputy Superintendent – Employee Relations by memorandum through channels within five (5) calendar days of the date that the Member receives notice in writing of the modified duty determination.

31. Dispute Resolution Process – Third Party Review. A Member contesting a modified duty determination as described in paragraph 29 above must also provide an appeal form to his/her attending physician. The Member's attending physician must complete the form and submit it to the third party consultant, along with any medical records deemed relevant in support of the attending physician's opinion with regard to the Member's degree of disability, within ten (10) calendar days of the date that the Member receives notice in writing of the modified duty determination. The Division and the State Insurance Fund shall also provide the third party consultant with the necessary medical documentation to support their degree of disability determination within ten (10) calendar days of receipt of the Member's memorandum contesting assignment to modified duty. A Member appealing a modified duty determination shall not be required to report for a modified duty assignment until completion of the Dispute Resolution Process. A Member who appeals a modified duty determination, and does not report for a modified duty assignment, will be removed from Workers' Compensation leave during the appeal process. The Member may use any accumulated sick, annual or personal leave accruals for such absence. In the event that the third party consultant finds the Member is fifty percent (50%) or less disabled and is eligible for modified duty or continuing in a modified duty assignment, the Member shall be assigned to modified duty

by the Division as soon as practicable. In the event that the third party consultant finds that no disability exists, the Member will be ordered to return to full duty. If the Member then refuses to return to duty after a finding by the third party consultant that the Member is fifty percent (50%) or less disabled or that there is no disability, the Division will direct the State Insurance Fund to pay the Member directly for any Workers' Compensation benefits the Member is entitled to and the Member may continue to charge accumulated accruals. In the event that the third party consultant finds that the Member is greater than fifty percent (50%) disabled, the assignment shall be rescinded and any accruals used by the Member during the appeal process shall be restored. In such case, the Member shall be entitled to leave under Regulation 5.12 of the State Police Administrative Manual or, if applicable based on a prior determination by the Superintendent as set forth above, to benefits under the Heightened Risk Disability Benefit.

32. Leave Entitlement. A Member on modified duty as a result of an on-duty injury, including a Member receiving the Heightened Risk Disability Benefit, shall not be charged with use of Compensation Leave except where otherwise provided for herein. In addition, such Member shall not have his/her leave accruals charged for work time spent performing his/her modified duty assignment, but shall be charged with accruals for any authorized leave.

#### Modified Duty Provisions for Off-Duty Illnesses/Injuries

33. Level of Fitness. To be considered for assignment to modified duty, a Member recovering from an off-duty illness/injury must present certification from his/her health care provider/attending physician indicating that he/she is fifty percent (50%) or less

disabled, and the Division Physician must concur with that determination.

34. Requesting Modified Duty. A Member recovering from an off-duty illness/injury may request assignment to modified duty by memorandum through channels. The Member must include with this memorandum written certification from his/her health care provider/attending physician that he/she is fifty percent (50%) or less disabled and has the ability to perform those modified duty assignments as set forth in paragraph 13 above. Such request shall be reviewed by the Division Physician in furtherance of his/her final medical determination. Any expense incurred in connection with this process shall be the Member's responsibility.

35. Review Procedure. In furtherance of the Division Physician's review of each request as set forth in paragraph 34 above, he/she may direct that additional relevant information be obtained from the Member's health care provider/attending physician prior to making a determination. Upon final medical determination by the Division Physician, the Superintendent shall have the sole authority to determine a Member's modified duty eligibility for off-duty illnesses/injuries. A Member who wishes to contest a modified duty eligibility determination based on the degree of disability determination by the Division Physician, may do so by utilizing the Dispute Resolution Process set forth in paragraph 37 below.

36. Limitations – Duration of Assignment. All approved modified duty assignments will run for the duration of the disability, or ninety (90) calendar days, whichever is less ("Assignment Period"). All modified duty assignments will be reviewed at the end of each Assignment Period and any approved extension to a subsequent Assignment Period will be subject to the same time limitations. The Superintendent shall determine whether



or not to approve an extension to a subsequent assignment period and, when necessary, will refer the matter to the Division Physician for further review and medical recommendation. Should the Division Physician determine that additional medical information is required prior to making a recommendation to the Superintendent, appropriate arrangements shall be made to obtain such medical information and/or to schedule an independent medical examination. The cost of this examination shall be the responsibility of the Member.

37. Dispute Resolution Process Generally. A Member who wishes to contest a modified duty eligibility determination based on the degree of disability determination by the Division Physician, may do so by using the Dispute Resolution Process. The Dispute Resolution Process shall consist of a review of the relevant medical documentation by an independent third party medical consultant retained by the Division upon submission of relevant documentation by the parties.

38. Dispute Resolution Process - Appeals. A Member recovering from an off-duty illness/injury who wishes to contest a modified duty determination as described in paragraph 37 above must submit his/her appeal to the Deputy Superintendent – Employee Relations by memorandum through channels within five (5) calendar days of the date that the Member receives notice in writing of the modified duty determination.

39. Dispute Resolution Process – Third Party Review. A Member who wishes to contest a modified duty determination concerning an off-duty illness/injury shall also have the right to use the Dispute Resolution Process as outlined in paragraph 37 above. If a Member appeals a modified duty determination through the Dispute Resolution Process, the Member shall not be entitled to report for duty until the Dispute Resolution

Process is complete. In the event that the third party consultant determines that the Member is fifty percent (50%) or less disabled, the Member will be assigned to modified duty as soon as practicable and any leave accruals that the Member used while awaiting a determination from the Dispute Resolution Process will be restored. If the third party consultant finds that the Member is greater than fifty percent (50%) disabled and incapable of performing modified duty, the Member shall remain on sick leave. After a minimum of thirty (30) calendar days has elapsed from the date of the third party consultant's determination, the Member may submit additional medical documentation through channels to the Division Physician and again request assignment to modified duty.

40. Leave Entitlement. A Member on modified duty as a result of an off-duty injury shall not have his/her leave accruals charged for work time spent performing his/her modified duty assignment, but shall be charged with accruals for any authorized leave.

#### Miscellaneous Terms

41. Contractual Terms. Unless specifically modified herein, the terms of the parties' Collective Bargaining Agreement remain in full force and effect.

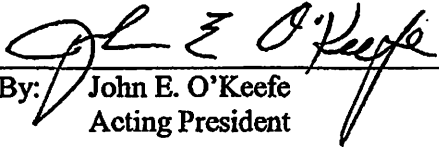
42. Right to Reopen. In the event the Division negotiates an enhancement to any benefit contained herein for Members of the Division not represented by NYSPIA, the parties agree to reopen negotiations and make any necessary modifications to the terms of this MOA.

43. Term of Agreement. Unless renewed by mutual agreement, this Agreement shall terminate on March 31, 2011.


44. Effective Date. This Agreement shall take effect on May 6, 2009.

IN WITNESS WHEREOF, the parties hereto have caused this MOA to be signed in their respective names by their respective representatives thereunto duly authorized.

NEW YORK STATE POLICE INVESTIGATORS ASSOCIATION

  
By: John E. O'Keefe  
Acting President

STATE OF NEW YORK,  
DIVISION OF STATE POLICE

  
By: Colonel Francis P. Christensen  
Deputy Superintendent

## **WORKERS' COMPENSATION DISPUTE RESOLUTION PROGRAM MEMORANDUM OF UNDERSTANDING**

The Dispute Resolution Program (DRP) for the employees of the Security Services Unit will provide a process to review conflicting medical opinions regarding an employee's level of disability for a compensable injury.

### **Eligibility**

Employees shall be eligible for the DRP if a compensable accident pursuant to the Workers' Compensation Law occurred on or after 4/15/93 and such employee elected to participate in the Medical Evaluation Program (MEP) administered by the State Insurance Fund (SIF) and the period of time under dispute occurs after the date of implementation of the program pursuant to a RFP to be issued. The dispute resolution shall be limited to those cases where after the employee has elected to participate in the MEP administered by the SIF and the employing agency has ordered, based on MEP, an employee to return to duty, either light duty or full duty based on the circumstances, because (1) the evaluating physician determines that the employee has an injury/illness resulting in a disability of 50 percent or less and the treating physician determines that the employee has an injury/illness resulting in a disability of greater than 50 percent or (2) where the evaluating physician determines that the employee has no disability and the treating physician determines that a disability does exist.

### **Effective Date**

The DRP will become effective on the date of implementation as will be set forth in the Request for Proposal for this program.

### **Program Description**

The following definitions apply only to the terms discussed in this section of the Memorandum of Understanding (MOU):

- ▶ **Work Day** - A work day is any day that the employee is scheduled to report to work. Work days include Saturday, Sunday and holidays.
- ▶ **Business Day** - A business day is any day Monday through Friday when there is a reasonable expectation that the majority of business is conducted. Business days do not include Saturday, Sunday or legal holidays.
- ▶ **Calendar Day** - A calendar day is any day of the week. Calendar days run sequentially.
- ▶ **Pass Day** - Pass days are the days of the week the employee is

scheduled not to work such as weekends.

- ▶ **Treating Physician** - The treating physician is the doctor that the employee chooses to provide direct care for the disability.
- ▶ **Evaluating Physician** - The evaluating physician is the medical consultant employed by the SIF who determines the degree of medical disability, upon which Management decides if an employee should return to work in light or full duty capacity, as appropriate. However, in no case shall the evaluating physician direct the employee to return to work.
- ▶ **DRP Administrator** - The DRP Administrator will be responsible for the review of the conflicting medical evaluations which are appealed by the treating physician.

The requests for dispute resolution must be initiated by the employee's treating physician in writing to the Administrator and may be faxed or sent by overnight mail. A request form will be designed by the DRP Administrator with input from the Joint Committee on Workers' Compensation which will require the treating physician to provide sufficient medical information to support an appeal. A physician selected by the Administrator of the DRP shall review the medical information from the treating and evaluating physicians and make a determination and notify in writing the employee, employing agency, evaluating physician, treating physician, NYSCOPBA and the SIF regarding the employee's level of disability within seven calendar days of the receipt of the written appeal.

In all cases it is the employee's responsibility to work light duty. The employee who disputes the evaluating physician's medical determination of degree of disability has three basic courses of action (1) refuses to work and files an appeal or (2) works the light duty assignment and files an appeal or (3) refuses to work and accepts the statutory Workers' Compensation benefits.

If an employee does not report to the employing Agency to accept the medically appropriate assignment: (1) the employee will notify the Agency and be considered to be on Leave Without Pay (LWOP) from the Agency's payroll for a period of three (3) work days; (2) absences during the seven (7) work days following excused LWOP may be charged to accrued leave credits, personal leave, sick leave or sick leave at half-pay if the employee is eligible; (3) if the treating physician does not file an appeal within three (3) business days after being ordered to return to work (4 business days if the order to return to work is given after noon), the employee will be returned to LWOP status; provided, however, once the appeal is filed, the employee may charge the balance of seven (7) work days to accrued leave credits, personal leave, sick leave or sick leave at half-pay in accordance with clause (2) above, after which time the

**employee will receive Article 14.9 leave.**

**Situations (1) and (3): The employee who refuses to return to work will be placed immediately on LWOP.**

- ▶ **The employee, whose physician appeals, will be placed in LWOP for three work days followed by up to seven work days charged to available leave credits.**
- ▶ **The employee's treating physician has three business days to submit the appeal to the DRP Administrator.**
  - **The appeal period begins the first business day the employee is notified that he/she must return to work, if such notification occurs prior to 12 Noon.**
  - **If the employee is notified to return to work after 12 Noon or if the employee is notified on a non-business day, the appeal period will begin on the next business day.**
- ▶ **If the appeal is not received during the appeal period as described above, the employee will remain or be placed on LWOP until an appeal is received.**
- ▶ **If the three days of LWOP ends prior to the expiration of the appeal period (three business days), the employee will be allowed to use leave credits until the appeal period expires.**
- ▶ **Following the three days of LWOP and if the appeal is received by the DRP Administrator during the appeal period, the employee will be allowed to charge available leave credits for up to seven work days pending the outcome of the appeal.**
- ▶ **Once the appeal is received the Administrator will have seven calendar days, from the time of receipt, to render a decision.**
- ▶ **If SIF's evaluating physician has determined that the employee is partially disabled, absences during the next seven workdays may be charged to sick leave and sick leave at half-pay, if the employee is eligible.**
- ▶ **If the employee has no leave credits, he/she will be continued on LWOP for the remainder of the seven workdays or until the decision is rendered, whichever occurs first.**
- ▶ **If the Administrator does not render a decision by COB on the seventh**

**calendar day following receipt of the appeal, the employee will be placed on WCL, not charged to credits, pursuant to Article 14.9 of the negotiated Agreement on the next scheduled workday pending the outcome of the appeal.**

- ▶ **Whenever LWOP is referenced it is presumed that eligible employees will receive the statutory benefits pursuant to the Workers' Compensation Law.**
- ▶ **The statutory benefit is creditable to New York State as wages paid whenever the employee is in pay status.**

**Situation (2): The employee works light duty pending the outcome of the appeal and will receive full pay.**

- ▶ **Once the appeal is received, the Administrator will have seven calendar days from the time of receipt to render a decision.**
- ▶ **If the Administrator does not render a decision by COB on the seventh calendar day following receipt of the appeal, the employee will be placed on WCL not charged to credits pursuant to Article 14.9 of the negotiated Agreement on the next scheduled workday pending the outcome of the appeal.**
- ▶ **The statutory benefit is creditable to New York State as wages paid whenever the employee is in pay status.**

**The outcome of the dispute resolution shall be reported, in writing, to the employee, employing agency, the evaluating physician, the treating physician, NYSCOPBA and the SIF, by the DRP Administrator.**

**If the physician selected by the Administrator of the DRP finds in favor of the treating physician's determination of level of disability, the employee will receive the appropriate level of Workers' Compensation Leave, as defined in Article 14.9 of the Security Services Unit/New York State contracts, retroactive to the first day of LWOP.**

- ▶ **The first day of LWOP is the first day the employee did not report for work.**
- ▶ **Receiving Workers' Compensation Leave in accordance with Article 14.9 means, that depending on how much absence the employee has already had for this injury, an employee may be on Workers' Compensation leave with pay without charge to credits, charging leave credits, using sick leave at**

half-pay, or on LWOP.

If the DRP's physician finds in favor of the SIF evaluating physician's determination of level of disability, the employing agency shall notify the employee to return to work, the employee shall report to the employing agency on the next assigned workday for the medically appropriate assignment, or if the employee refuses to return to work, he/she will be placed on LWOP.

- ▶ No change will be made in the employee's status retroactively based on the denial of an appeal for any absence which occurred during pendency of the appeal.
- ▶ Any leave credits used during the appeal period will not be returned to the employee.
- ▶ If, at a subsequent hearing of the Workers' Compensation Board, the appeal period is found compensable, restoration of such leave credits will be proportional to the wage award.
- ▶ The employee who chooses to remain absent and is placed on LWOP will receive benefits as directed by the Workers' Compensation Board only, and is entitled to no benefits pursuant to Article 14.9.

Requests for further appeals beyond the DRP pertaining to issues of eligibility for statutory benefits shall be to the Workers' Compensation Board pursuant to the New York State Workers' Compensation Law.


#### Joint Committee on Workers' Compensation

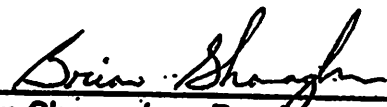
The Joint Committee on Workers' Compensation established pursuant to the Workers' Compensation MOU signed July 1, 1991, and modified by the Workers' Compensation MOU dated November 9, 1995, shall, in addition to the responsibilities outlined in the November 9, 1995 MOU, work with the parties in the development and implementation of the NYSCOPBA Workers' Compensation DRP as follows:

- ▶ Review and comment on the Request for Proposals (RFP);
- ▶ Attend the Bidders' Conference;
- ▶ Review, comment and provide feedback on the proposals submitted by potential vendors in response to the RFP;
- ▶ Attend and take an active role in the Management Interviews;



- ▶ Attend any site visits planned in conjunction with the RFP process;
- ▶ Consult on the selection of the finalist vendor;
- ▶ Review and comment on the employee communication material developed for the Program including the DRP appeal request form;
- ▶ Review reports produced by the Program Administrator which monitor the ongoing administration of the Program;
- ▶ Participate in joint educational conferences with the agencies and facilities;
- ▶ Establish a schedule for periodic reviews of the Medical Evaluation Program;
- ▶ Provide the Program Administrator with copies of Department of Civil Service job descriptions.

  
\_\_\_\_\_  
Linda Angello, Director  
For the State of New York

  
\_\_\_\_\_  
Brian Shanagher, President  
For NYSCOPBA

Dated: May 18, 2000

Dated: MAY 18, 2000



**Workers' Compensation Board**

# Doctor's Initial Report

# C-4

Use this form to report the *first* time you treated the patient. (To report continued treatment, use Form C-4.2. To report permanent impairment, use Form C-4.3.)

Please answer all questions completely, attaching extra pages if necessary, and submit promptly to the Board, the insurance carrier and to the patient's attorney or licensed representative, if he/she has one; if not, send a copy to the patient. Failure to do so may delay the payment of necessary treatment, prevent the timely payment of wage loss benefits to the injured worker, create the necessity for testimony, and jeopardize your Board authorization. You may also fill out this form online at [www.wcb.ny.gov](http://www.wcb.ny.gov).

### A. Patient's Information

1. Name: \_\_\_\_\_ 2. Social Security #: \_\_\_\_\_ - \_\_\_\_ - \_\_\_\_

Last First MI

3. Home phone #: (\_\_\_\_) \_\_\_\_\_ 4. WCB Case # (if known): \_\_\_\_\_ 5. Carrier Case #: \_\_\_\_\_

6. Mailing address: \_\_\_\_\_

Number and Street City State Zip Code

7. Date of injury/onset of illness: \_\_\_\_/\_\_\_\_/\_\_\_\_ 8. Date of Birth: \_\_\_\_/\_\_\_\_/\_\_\_\_ 9. Gender:  Male  Female

10. On the date of injury/illness what was the patient's job title or description: \_\_\_\_\_

11. On the date of injury/illness what were the patient's usual work activities: \_\_\_\_\_

12. Patient's Account #: \_\_\_\_\_

### B. Employer Information

1. Employer when injury occurred: \_\_\_\_\_ 2. Phone #: (\_\_\_\_) \_\_\_\_\_

Company/Agency Name

3. Employer Address: \_\_\_\_\_

Number and Street City State Zip Code

### C. Doctor's Information

1. Your name: \_\_\_\_\_ 2. WCB Authorization #: \_\_\_\_\_

Last First MI

3. WCB Rating Code: \_\_\_\_\_ 4. Federal Tax ID #: \_\_\_\_\_ The Tax ID # is the (check one):  SSN  EIN

5. Office address: \_\_\_\_\_

Number and Street City State Zip Code

6. Billing group or practice name: \_\_\_\_\_

7. Billing address: \_\_\_\_\_

Number and Street City State Zip Code

8. Office phone #: (\_\_\_\_) \_\_\_\_\_ 9. Billing phone #: (\_\_\_\_) \_\_\_\_\_ 10. Treating Provider's NPI #: \_\_\_\_\_

11. You are a (check one):  Physician  Podiatrist  Chiropractor

### D. Billing Information

1. Employer's insurance carrier: \_\_\_\_\_ 2. Carrier Code #: **W** \_\_\_\_\_

3. Insurance carrier's address: \_\_\_\_\_

Number and Street City State Zip Code

4. Diagnosis or nature of disease or injury:

Enter ICD10 Code: ICD10 Descriptor:

(1) \_\_\_\_\_

(2) \_\_\_\_\_

(3) \_\_\_\_\_

(4) \_\_\_\_\_

Relate ICD10 codes in (1), (2), (3), or (4) to Diagnosis Code column on page 2 by line.

Patient's Name: \_\_\_\_\_  
Last First MI

Date of injury/onset of illness: \_\_\_\_/\_\_\_\_/\_\_\_\_

Dates of Service			Place of Service	Leave Blank	Use WCB Codes		Diagnosis Code	\$ Charges	Days/Units	COB	Zip code where service was rendered
From MM	DD	YY			To MM	DD					

Check here if services were provided by a WCB preferred provider organization (PPO).

Total Charge \$	Amount Paid (Carrier Use Only) \$	Balance Due (Carrier Use Only) \$
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**E. History**

- Based on the patient's history, where and how did the injury/illness happen: \_\_\_\_\_  
 \_\_\_\_\_
- How did you learn about the injury/illness (check one):  Patient  Medical Records  Other(specify): \_\_\_\_\_
- Did another health provider treat this injury/illness including hospitalization and/or surgery?  Yes  No If yes, give details: \_\_\_\_\_
- Have you previously treated this patient for a similar work-related injury/illness?  Yes  No If yes, when: \_\_\_\_\_

**F. Exam Information**

- Date(s) of Examination: \_\_\_\_\_
- Patient's subjective complaints: Check all that apply and identify specific affected body part(s).
 

<input type="checkbox"/> Numbness/Tingling _____	<input type="checkbox"/> Swelling _____
<input type="checkbox"/> Pain _____	<input type="checkbox"/> Weakness _____
<input type="checkbox"/> Stiffness _____	<input type="checkbox"/> Other (specify) _____
- Type/nature of injury: Check all that apply and identify specific affected body part(s).
 

<input type="checkbox"/> Abrasion _____	<input type="checkbox"/> Infectious Disease _____
<input type="checkbox"/> Amputation _____	<input type="checkbox"/> Inhalation Exposure _____
<input type="checkbox"/> Avulsion _____	<input type="checkbox"/> Laceration _____
<input type="checkbox"/> Bite _____	<input type="checkbox"/> Needle Stick _____
<input type="checkbox"/> Burn _____	<input type="checkbox"/> Poisoning/Toxic Effects _____
<input type="checkbox"/> Contusion/Hematoma _____	<input type="checkbox"/> Psychological _____
<input type="checkbox"/> Crush Injury _____	<input type="checkbox"/> Puncture Wound _____
<input type="checkbox"/> Dermatitis _____	<input type="checkbox"/> Repetitive Strain Injury _____
<input type="checkbox"/> Dislocation _____	<input type="checkbox"/> Spinal Cord Injury _____
<input type="checkbox"/> Fracture _____	<input type="checkbox"/> Sprain/Strain _____
<input type="checkbox"/> Hearing Loss _____	<input type="checkbox"/> Torn Ligament, Tendon or Muscle _____
<input type="checkbox"/> Hernia _____	<input type="checkbox"/> Vision Loss _____
<input type="checkbox"/> Other (specify) _____	

Patient's Name: \_\_\_\_\_ Date of injury/onset of illness: \_\_\_\_/\_\_\_\_/\_\_\_\_  
Last First MI

4. Physical examination: *Check all relevant objective findings and identify specific affected body part(s).*

- None at present
  - Bruising \_\_\_\_\_
  - Burns \_\_\_\_\_
  - Crepitation \_\_\_\_\_
  - Deformity \_\_\_\_\_
  - Edema \_\_\_\_\_
  - Hematoma/Lump/Swelling \_\_\_\_\_
  - Joint Effusion \_\_\_\_\_
  - Laceration/Sutures \_\_\_\_\_
  - Pain/Tenderness \_\_\_\_\_
  - Scar \_\_\_\_\_
  - Other findings: \_\_\_\_\_
- Neuromuscular Findings:
    - Abnormal/Restricted ROM
      - Active ROM \_\_\_\_\_
      - Passive ROM \_\_\_\_\_
    - Gait \_\_\_\_\_
    - Palpable Muscle Spasm \_\_\_\_\_
    - Reflexes \_\_\_\_\_
    - Sensation \_\_\_\_\_
    - Strength (Weakness) \_\_\_\_\_
    - Wasting/Muscle Atrophy \_\_\_\_\_

5. Describe any diagnostic test(s) rendered at this visit: \_\_\_\_\_

6. Describe any treatment(s) rendered at this visit: \_\_\_\_\_

7. Describe prognosis for recovery: \_\_\_\_\_

8. Does the patient's medical history reveal any pre-existing condition(s) that may affect the treatment and/or prognosis?  Yes  No  
If yes, list and describe: \_\_\_\_\_

**G. Doctor's Opinion**

1. In your opinion, was the incident that the patient described the competent medical cause of this injury/illness?  Yes  No
2. Are the patient's complaints consistent with his/her history of the injury/illness?  Yes  No
3. Is the patient's history of the injury/illness consistent with your objective findings?  Yes  No  N/A (no findings at this time)
4. What is the percentage (0-100%) of temporary impairment? \_\_\_\_\_%
5. Describe findings and relevant diagnostic test results: \_\_\_\_\_

**H. Plan of Care**

1. What is your proposed treatment? \_\_\_\_\_

2. Medication(s):(a) list medications prescribed: \_\_\_\_\_  
(b) list over-the-counter medications advised: \_\_\_\_\_

Medication restrictions:  None  May affect patient's ability to return to work, make patient drowsy, or other issue. Explain below:

Patient's Name: \_\_\_\_\_ Date of injury/onset of illness: \_\_\_\_/\_\_\_\_/\_\_\_\_  
Last First MI

3. Does the patient need diagnostic tests or referrals?  Yes  No If yes, check all that apply:
- Tests:**  CT Scan  EMG/NCS  MRI (Specify): \_\_\_\_\_  Labs (Specify): \_\_\_\_\_  X-rays (Specify): \_\_\_\_\_  Other (Specify): \_\_\_\_\_
- Referrals:**  Chiropractor  Internist/Family Physician  Occupational Therapist  Physical Therapist  Specialist in \_\_\_\_\_  Other (Specify): \_\_\_\_\_

4. Assistive devices prescribed for this patient:  Cane  Crutches  Orthotics  Walker  Wheelchair  Other (specify): \_\_\_\_\_
- Important:** Form C-4 AUTH should be used to request any special medical service costing over \$1000 or for those services requiring pre-authorization pursuant to the Medical Treatment Guidelines for the back, neck, knee and shoulder.

5. When is the patient's next follow-up appointment?  
 Within a week  1-2 weeks  3-4 weeks  5-6 weeks  7-8 weeks  \_\_\_\_\_ months  Return as needed

**I. Work Status**

1. Has the patient missed work because of the injury/illness?  Yes  No If yes, date patient first missed work: \_\_\_\_/\_\_\_\_/\_\_\_\_  
Is the patient currently working?  Yes  No If yes, did the patient return to:  usual work activities  limited work activities

2. Can the patient return to work? (check only one):
- a.  The patient cannot return to work because (explain): \_\_\_\_\_
- b.  The patient can return to work without limitations on \_\_\_\_/\_\_\_\_/\_\_\_\_
- c.  The patient can return to work with the following limitations (check all that apply) on \_\_\_\_/\_\_\_\_/\_\_\_\_
- |   |  |   |
|---|--|---|
| <input type="checkbox"/> Bending/twisting         | <input type="checkbox"/> Lifting                       | <input type="checkbox"/> Sitting                      |
| <input type="checkbox"/> Climbing stairs/ladders  | <input type="checkbox"/> Operating heavy equipment     | <input type="checkbox"/> Standing                     |
| <input type="checkbox"/> Environmental conditions | <input type="checkbox"/> Operation of motor vehicles   | <input type="checkbox"/> Use of public transportation |
| <input type="checkbox"/> Kneeling                 | <input type="checkbox"/> Personal protective equipment | <input type="checkbox"/> Use of upper extremities     |
| <input type="checkbox"/> Other (explain): _____   |  |   |

Describe/quantify the limitations: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

How long will these limitations apply?  1-2 days  3-7 days  8-14 days  15+ days  Unknown at this time  N/A

3. With whom will you discuss the patient's return to work and/or limitations?  with patient  with patient's employer  N/A

**This form is signed under penalty of perjury.**

Board Authorized Health Care Provider - Check one:

- I provided the services listed above.  
 I actively supervised the health-care provider named below who provided these services.

Provider's name \_\_\_\_\_ Specialty \_\_\_\_\_

Board Authorized Health Care Provider signature:

\_\_\_\_\_  
Name Signature Specialty Date

**MEDICAL REPORTING****IMPORTANT TO THE ATTENDING DOCTOR**

- This form is to be used to file reports in workers' compensation, volunteer firefighters' or volunteer ambulance workers' benefit cases as follows:  
**48 HOUR INITIAL REPORT** - Prepare and submit this form, complete in all details, within 48 hours after you first render treatment.  
 If you continue to treat, use form C-4.2 for future reporting. **DO NOT** use this form for future reporting.  
 All reports are to be filed with the Workers' Compensation Board, the workers' compensation insurance carrier, self-insured employer, and if the patient is represented by an attorney or licensed representative, with such representative. If the claimant is not represented, a copy must be sent to the claimant.  
 Ophthalmologists use form C-5, Occupational/Physical Therapists use form OT/PT-4 and Psychologists use form PS-4 for filing reports.
- Please ask your patient for his/her WCB Case Number and the Insurance Carrier's Case Number, if they are known to him/her, and show these numbers on your reports. In addition, ask your patient if he/she has retained a representative. If so, ask for the name and address of the representative. You are required to send copies of all reports to the patient's representative, if any.
- This form must be signed by the attending doctor and must contain her/his authorization certificate number, code letters and NPI number. If the patient is hospitalized, it may be signed by a licensed doctor to whom the treatment of the case has been assigned as a member of the attending staff of the hospital.
- AUTHORIZATION FOR SPECIAL SERVICES** - Form C-4 AUTH should be used to request any special medical service over \$1000 or for those services requiring pre-authorization pursuant to the Medical Treatment Guidelines for the back, neck, knee and shoulder.  
**AUTHORIZATION FOR SPECIAL SERVICES IS NOT REQUIRED IN AN EMERGENCY**
- LIMITATION OF PODIATRY TREATMENT** - Podiatry treatment is limited as defined in Section 7001 of the Education Law and Section 13-k(2) of the Workers' Compensation Law.
- LIMITATION OF CHIROPRACTIC TREATMENT** - Chiropractic treatment is limited as defined in Section 6551 of the Education Law and the Chair's Rules Relative to Chiropractic Practice Under Section 13-l of the Workers' Compensation Law.  
**A CHIROPRACTOR OR PODIATRIST FILING THIS REPORT CERTIFIES THAT THE INJURY DESCRIBED CONSISTS SOLELY OF A CONDITION(S) WHICH MAY LAWFULLY BE TREATED AS DEFINED IN THE EDUCATION LAW AND, WHERE IT DOES NOT, HAS ADVISED THE INJURED PERSON TO CONSULT A PHYSICIAN OF HIS/HER CHOICE.**
- HIPAA NOTICE** - In order to adjudicate a workers' compensation claim, WCL13-a(4)(a) and 12 NYCRR 325-1.3 require health care providers to regularly file medical reports of treatment with the Board and the carrier or employer. Pursuant to 45 CFR 164.512 these legally required medical reports are exempt from HIPAA's restrictions on disclosure of health information.

**ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD PRESENTS, CAUSES TO BE PRESENTED, OR PREPARES WITH KNOWLEDGE OR BELIEF THAT IT WILL BE PRESENTED TO OR BY AN INSURER, OR SELF-INSURER, ANY INFORMATION CONTAINING ANY FALSE MATERIAL STATEMENT OR CONCEALS ANY MATERIAL FACT SHALL BE GUILTY OF A CRIME AND SUBJECT TO SUBSTANTIAL FINES AND IMPRISONMENT.**

**BILLING INFORMATION**

Complete all billing information contained on this form. Use continuation Form C-4.1, if necessary. The workers' compensation carrier has 45 days to pay your bill or to file an objection to it. Contact the workers' compensation carrier if you receive neither payment nor an objection within this time period. After contacting the carrier, you may, if necessary, contact the Board's Disputed Bill Unit, at the Customer Service toll-free number listed below, for information/assistance.

**IMPORTANT TO THE PATIENT**

**YOUR DOCTORS' BILLS (AND BILLS FOR HOSPITALS AND OTHER SERVICES OF A MEDICAL NATURE) WILL BE PAID BY YOUR EMPLOYER, THE LIABLE POLITICAL SUBDIVISION OR ITS INSURANCE COMPANY OR THE UNAFFILIATED VOLUNTEER AMBULANCE SERVICE IF YOUR CLAIM IS ALLOWED. DO NOT PAY THESE BILLS YOURSELF, UNLESS YOUR CASE IS DISALLOWED OR CLOSED FOR FAILURE TO PROSECUTE.**

IF YOU HAVE ANY QUESTIONS CONCERNING THIS NOTICE OR YOUR CASE, OR WITH RESPECT TO YOUR RIGHTS UNDER THE WORKERS' COMPENSATION LAW, OR THE VOLUNTEER FIREFIGHTERS' OR VOLUNTEER AMBULANCE WORKERS' LAWS, YOU SHOULD CONSULT THE NEAREST OFFICE OF THE BOARD FOR ADVICE. ALWAYS USE THE CASE NUMBERS SHOWN ON THE OTHER SIDE OF THIS NOTICE, OR ON OTHER PAPERS RECEIVED BY YOU, IF YOU FIND IT NECESSARY TO COMMUNICATE WITH THE BOARD OR THE CARRIER. ALSO, MENTION YOUR SOCIAL SECURITY NUMBER IF YOU WRITE OR CALL THE BOARD.

**IMPORTANTE PARA EL PACIENTE**

**LAS FACTURAS POR SERVICIOS MEDICOS INCLUYENDO HOSPITALES Y TODO SERVICIO DE NATURALEZA MEDICA SERA PAGADO POR EL PATRONO O POR LA ENTIDAD RESPONSABLE O SU COMPANIA DE SEGUROS SEGUN SEA EL CASO; SI SU RECLAMACION ES APROBADA, NO PAGUE ESTAS FACTURAS A MENOS QUE SU CASO SEA DESESTIMADO EN SU FONDO O ARCHIVADO POR NO REALIZAR LOS TRAMITES CORRESPONDIENTES.**

SI USTED TIENE ALGUNA PREGUNTA, EN RELACION A ESTA NOTIFICACION O A SU CASO O EN RELACION A SUS DERECHOS BAJO LA LEY DE COMPENSACION OBRERA O LA LEY DE BOMBEROS VOLUNTARIOS O LA LEY DE SERVICIOS DE AMBULANCIAS VOLUNTARIOS DEBE COMUNICARSE CON LA OFICINA MAS CERCANA DE LA JUNTA PARA ORIENTACION. SIEMPRE USE EL NUMERO DEL CASO QUE APARECE EN LA PARTE DEL FRENTE DE ESTA NOTIFICACION, O EN OTROS DOCUMENTOS RECIBIDOS POR USTED. SI LE ES NECESARIO COMUNICARSE CON LA JUNTA O CON EL "CARRIER."

¡AMBIEN MENCIONE EN SU COMUNICACION ORAL O ESCRITA SU NUMERO DE SEGURO SOCIAL.

Inquiries, medical and other reports should be sent directly to the Workers' Compensation Board at the address listed below:

**NYS Workers' Compensation Board, Centralized Mailing, PO Box 5205, Binghamton, NY 13902-5205**

Customer Service Toll-Free Line: 877-632-4996

Statewide Fax Line: 877-533-0337



**Workers' Compensation Board**

**Doctor's Progress Report**

**C-4.2**

Use this form to report *continuing* services. (To report the first time you treated the patient, use Form C-4. To report permanent impairment, use Form C-4.3.)

Please answer all questions completely, attaching extra pages if necessary, and submit promptly to the Board, the insurance carrier and to the patient's attorney or licensed representative, if he/she has one; if not, send a copy to the patient. Failure to do so may delay the payment of necessary treatment, prevent the timely payment of wage loss benefits to the injured worker, create the necessity for testimony, and jeopardize your Board authorization. You may also fill out this form online at [www.wcb.ny.gov](http://www.wcb.ny.gov).

Date(s) of Examination: \_\_\_\_\_

WCB Case Number (if known): \_\_\_\_\_ Carrier Case Number (if known): \_\_\_\_\_

**A. Patient's Information**

1. Name: Last \_\_\_\_\_ First \_\_\_\_\_ MI \_\_\_\_\_ 2. Date of injury/illness: \_\_\_\_/\_\_\_\_/\_\_\_\_ 3. Soc. Sec. #: \_\_\_\_-\_\_\_\_-\_\_\_\_  
 4. Address (if changed from previous report): \_\_\_\_\_  
Number and Street City State Zip Code  
 5. Patient's Account #: \_\_\_\_\_

**B. Doctor's Information**

1. Your name: Last \_\_\_\_\_ First \_\_\_\_\_ MI \_\_\_\_\_ 2. WCB Authorization #: \_\_\_\_\_  
 3. WCB Rating Code: \_\_\_\_\_ 4. Federal Tax ID #: \_\_\_\_\_ The Tax ID # is the (check one):  SSN  EIN  
 5. Office address: \_\_\_\_\_  
Number and Street City State Zip Code  
 6. Billing Group or Practice Name: \_\_\_\_\_  
 7. Billing address: \_\_\_\_\_  
Number and Street City State Zip Code  
 8. Office phone #: (\_\_\_\_) \_\_\_\_\_ 9. Billing phone #: (\_\_\_\_) \_\_\_\_\_ 10. Treating Provider's NPI #: \_\_\_\_\_

**C. Billing Information**

1. Employer's insurance carrier: \_\_\_\_\_ 2. Carrier Code #: **W** \_\_\_\_\_  
 3. Insurance carrier's address: \_\_\_\_\_  
Number and Street City State Zip Code  
 4. Diagnosis or nature of disease or injury:  
 Enter ICD10 Code: \_\_\_\_\_ ICD10 Descriptor: \_\_\_\_\_  
 (1) \_\_\_\_\_  
 (2) \_\_\_\_\_  
 (3) \_\_\_\_\_  
 (4) \_\_\_\_\_

Relate ICD10 codes in (1), (2), (3), or (4) to Diagnosis Code column below by line.

Dates of Service						Place of Service	Leave Blank	Use WCB Codes		Diagnosis Code	\$ Charges	Days/Units	COB	Zip code where service was rendered
From MM	DD	YY	To MM	DD	YY			Procedures, Services or Supplies CPT/HCPCS	MODIFIER					

Check here if services were provided by a WCB preferred provider organization (PPO).  

Total Charge	Amount Paid (Carrier Use Only)	Balance Due (Carrier Use Only)
\$ _____	\$ _____	\$ _____

**D. Examination and Treatment**

1. Describe any diagnostic test(s) rendered at this visit: \_\_\_\_\_

Patient's Name: \_\_\_\_\_ Date of injury/onset of illness: \_\_\_\_/\_\_\_\_/\_\_\_\_  
Last First MI

2. List any changes revealed by your most recent examination in the following: area of injury, type/nature of injury, patient's subjective complaints or your objective findings: \_\_\_\_\_

3. List additional body parts affected by this injury, if any: \_\_\_\_\_

4. Based on your most recent examination, list changes to the original treatment plan, prescription medications or assistive devices, if any: \_\_\_\_\_

5. Based on this examination, does the patient need diagnostic tests or referrals?  Yes  No If yes, check all that apply:

**Tests:**

- CT Scan  EMG/NCS  
 MRI (specify): \_\_\_\_\_  
 Labs (specify): \_\_\_\_\_  
 X-rays (specify): \_\_\_\_\_  
 Other (specify): \_\_\_\_\_

**Referrals:**

- Chiropractor  Internist/Family Physician  
 Occupational Therapist  
 Physical Therapist  
 Specialist in: \_\_\_\_\_  
 Other (specify): \_\_\_\_\_

*Important: Form C-4 AUTH should be used to request any special medical service over \$1000 or for those services requiring pre-authorization pursuant to the Medical Treatment Guidelines for the back, neck, knee and shoulder.*

6. Describe treatment rendered today: \_\_\_\_\_

7. When is patient's next follow-up visit?  Within a week  1-2 wks  3-4 wks  5-6 wks  7-8 wks  \_\_\_\_ months  as needed

**E. Doctor's Opinion (based on this examination)**

1. In your opinion, was the incident that the patient described the competent medical cause of this injury/illness?  Yes  No  
2. Are the patient's complaints consistent with his/her history of the injury/illness?  Yes  No  
3. Is the patient's history of the injury/illness consistent with your objective findings?  Yes  No  N/A (no findings at this time)  
4. What is the percentage (0-100%) of temporary impairment? \_\_\_\_\_ %  
5. Describe findings and relevant diagnostic test results: \_\_\_\_\_

**F. Return to Work**

1. Is patient working now?  Yes  No If yes, are there work restrictions?  Yes  No If yes, describe the work restrictions: \_\_\_\_\_

How long will the work restrictions apply?  1-2 days  3-7 days  8-14 days  15+ days  Unknown at this time

2. Can patient return to work? (check only one)

- a.  The patient cannot return to work because (explain): \_\_\_\_\_  
b.  The patient can return to work without limitations on: \_\_\_\_/\_\_\_\_/\_\_\_\_  
c.  The patient can return to work with the following limitations (check all that apply) on: \_\_\_\_/\_\_\_\_/\_\_\_\_  
 Bending/twisting  Lifting  Sitting  
 Climbing stairs/ladders  Operating heavy equipment  Standing  
 Environmental conditions  Operation of motor vehicles  Use of public transportation  
 Kneeling  Personal protective equipment  Use of upper extremities  
 Other (explain): \_\_\_\_\_

Describe/quantify the limitations: \_\_\_\_\_  
How long will these limitations apply?  1-2 days  3-7 days  8-14 days  15+ days  Unknown at this time  N/A

3. With whom will you discuss the patient's returning to work and/or limitations?  with patient  with patient's employer  N/A  
4. Would the patient benefit from vocational rehabilitation?  Yes  No

**This form is signed under penalty of perjury.**

**Board Authorized Health Care Provider - Check one:**

- I provided the services listed above.  
 I actively supervised the health-care provider named below who provided these services.

Provider's name \_\_\_\_\_ Specialty \_\_\_\_\_

**Board Authorized Health Care Provider signature:** \_\_\_\_\_



**MEDICAL REPORTING****IMPORTANT - TO THE ATTENDING DOCTOR**

- This form is to be used to file reports in workers' compensation, volunteer firefighters' or volunteer ambulance workers' benefit cases as follows:  
**PROGRESS REPORTS** - Following the filing of Form C-4, Doctor's Initial Report, file this form within 15 days after initial report and thereafter during continuing treatment without further request, when a follow-up visit is necessary, except the intervals between reports shall be no more than 90 days.  
 When reporting on MMI and/or Permanent Impairment, use Form C-4.3.  
 All reports are to be filed with the Workers' Compensation Board, the workers' compensation insurance carrier, self-insured employer, and if the patient is represented by an attorney or licensed representative, with such representative. If the claimant is not represented, a copy must be sent to the claimant.  
 Ophthalmologists use Form C-5, Occupational/Physical Therapists use Form OT/PT-4 and Psychologists use Form PS-4 for filing reports.
- Please ask your patient for his/her WCB Case Number and the Insurance Carrier's Case Number, if they are known to him/her, and show these numbers on your reports. In addition, ask your patient if he/she has retained a representative. If so, ask for the name and address of the representative. You are required to send copies of all reports to the patient's representative, if any.
- This form must be signed by the attending doctor and must contain her/his authorization certificate number, code letters and NPI number. If the patient is hospitalized, it may be signed by a licensed doctor to whom the treatment of the case has been assigned as a member of the attending staff of the hospital.
- AUTHORIZATION FOR SPECIAL SERVICES** - Form C-4 AUTH should be used to request any special medical service(s) costing over \$1000 or for those services requiring pre-authorization pursuant to the Medical Treatment Guidelines for the back, neck, knee or shoulder.  
**AUTHORIZATION FOR SPECIAL SERVICES IS NOT REQUIRED IN AN EMERGENCY**
- LIMITATION OF PODIATRY TREATMENT** - Podiatry treatment is limited as defined in Section 7001 of the Education Law and Section 13-k(2) of the Workers' Compensation Law.
- LIMITATION OF CHIROPRACTIC TREATMENT** - Chiropractic treatment is limited as defined in Section 6551 of the Education Law and the Chair's Rules Relative to Chiropractic Practice Under Section 13-l of the Workers' Compensation Law.  
**A CHIROPRACTOR OR PODIATRIST FILING THIS REPORT CERTIFIES THAT THE INJURY DESCRIBED CONSISTS SOLELY OF A CONDITION(S) WHICH MAY LAWFULLY BE TREATED AS DEFINED IN THE EDUCATION LAW AND, WHERE IT DOES NOT, HAS ADVISED THE INJURED PERSON TO CONSULT A PHYSICIAN OF HIS/HER CHOICE.**
- HIPAA NOTICE** - In order to adjudicate a workers' compensation claim, WCL13-a(4)(a) and 12 NYCRR 325-1.3 require health care providers to regularly file medical reports of treatment with the Board and the carrier or employer. Pursuant to 45 CFR 164.512 these legally required medical reports are exempt from HIPAA's restrictions on disclosure of health information.

**ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD PRESENTS, CAUSES TO BE PRESENTED, OR PREPARES WITH KNOWLEDGE OR BELIEF THAT IT WILL BE PRESENTED TO OR BY AN INSURER, OR SELF-INSURER, ANY INFORMATION CONTAINING ANY FALSE MATERIAL STATEMENT OR CONCEALS ANY MATERIAL FACT SHALL BE GUILTY OF A CRIME AND SUBJECT TO SUBSTANTIAL FINES AND IMPRISONMENT.**

**BILLING INFORMATION**

Complete all billing information contained on this form. Use continuation Form C-4.1, if necessary. The workers' compensation carrier has 45 days to pay your bill or to file an objection to it. Contact the workers' compensation carrier if you receive neither payment nor an objection within this time period. After contacting the carrier, you may, if necessary, contact the Board's Disputed Bill Unit, at the Albany address indicated below, for information/assistance.

**IMPORTANT TO THE PATIENT**

**YOUR DOCTORS' BILLS (AND BILLS FOR HOSPITALS AND OTHER SERVICES OF A MEDICAL NATURE) WILL BE PAID BY YOUR EMPLOYER, THE LIABLE POLITICAL SUBDIVISION OR ITS INSURANCE COMPANY OR THE UNAFFILIATED VOLUNTEER AMBULANCE SERVICE IF YOUR CLAIM IS ALLOWED. DO NOT PAY THESE BILLS YOURSELF, UNLESS YOUR CASE IS DISALLOWED OR CLOSED FOR FAILURE TO PROSECUTE.**

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**SI USTED TIENE ALGUNA PREGUNTA, EN RELACION A ESTA NOTIFICACION O A SU CASO O EN RELACION A SUS DERECHOS BAJO LA LEY DE COMPENSACION OBRERA O LA LEY DE BOMBEROS VOLUNTARIOS O LA LEY DE SERVICIOS DE AMBULANCIAS VOLUNTARIOS DEBE COMUNICARSE CON LA OFICINA MAS CERCANA DE LA JUNTA PARA ORIENTACION, SIEMPRE USE EL NUMERO DEL CASO QUE APARECE EN LA PARTE DEL FRENTE DE ESTA NOTIFICACION, O EN OTROS DOCUMENTOS RECIBIDOS POR USTED. SI LE ES NECESARIO COMUNICARSE CON LA JUNTA O CON EL "CARRIER."**

**TAMBIEN MENCIONE EN SU COMUNICACION ORAL O ESCRITA SU NUMERO DE SEGURO SOCIAL.**

**WORKERS' COMPENSATION BOARD**

Reports should be filed by sending directly to the WCB at the address below with a copy sent to the insurance carrier:

NYS Workers' Compensation Board  
 Centralized mailing  
 PO Box 5205  
 Binghamton, NY 13902-5202

Customer Service Toll-Free Number: 877-632-4996

Statewide Fax Line: 877-633-0337

THE WORKERS' COMPENSATION BOARD EMPLOYS AND SERVES PEOPLE WITH DISABILITIES WITHOUT DISCRIMINATION

## DRP Utilization 2012 – 2015

	Group 1 (MEP) Appeals Received	Group 1 (MEP) Valid Appeals Completed	Group 2 (MDP) Appeals Received	Group 2 (MDP) Valid Appeals Completed
<b>2012</b>				
January	0	0	0	0
February	2	1	1	0
March	7	4	2	3
April	7	11	2	2
May	11	10	1	1
June	6	7	0	0
July	8	4	2	2
August	13	14	0	0
September	7	7	0	0
October	6	7	1	1
November	6	4	2	1
December	6	6	2	3
<b>Total</b>	<b>79</b>	<b>75</b>	<b>13</b>	<b>13</b>
<b>2013</b>				
January	9	9	0	0
February	7	5	1	1
March	5	9	1	1
April	3	1	1	1
May	5	5	4	4
June	8	8	1	1
July	11	10	1	0
August	7	8	0	0
September	8	5	1	1
October	5	8	1	1
November	5	4	0	1
December	8	4	1	0
<b>Total</b>	<b>81</b>	<b>76</b>	<b>12</b>	<b>11</b>

	<b>Group 1 (MEP) Appeals Received</b>	<b>Group 1 (MEP) Valid Appeals Completed</b>	<b>Group 2 (MDP) Appeals Received</b>	<b>Group 2 (MDP) Valid Appeals Completed</b>
<b>2014</b>				
January	9	6		
February	4	7		
March	7	5	1	1
April	11	11	2	2
May	6	8	1	1
June	8	9	4	4
July	5	6		
August	6	5		
September	7	7		
October	6	1		
November	12	6		
December	3	3	1	1
<b>Total</b>	<b>84</b>	<b>74</b>	<b>9</b>	<b>9</b>
<b>2015</b>				
January	3	2		
February	7	3		
March	5	6		
April	5	2		
May	7	7		
June	9	8		
July	9	5		
August	8	7		
September	3	3		
October	8	4		
November	4	6		
December	14	7		
<b>Total</b>	<b>82</b>	<b>60</b>	<b>0</b>	<b>0</b>
<b>4 Year Total</b>	<b>326</b>	<b>285</b>	<b>34</b>	<b>33</b>

- ❖ Greater monthly differences in “Valid Appeals Completed” compared to “Appeals Received” may be a result of the receipt of invalid appeals, pending appeals due to the delay of proper medical documentation submission, or withdrawn appeals.

### Dispute Resolution Program Network Count

Specialty Description	WCB Rating Codes	Number of Current Reviewing Physicians	Additional Reviewing Physicians to be added prior to 12/1/16	Total Number of Reviewing Physicians on 12/1/16
Allergy / Immunology	AL, CAL, OPAL, OPCAL			
Anesthesiology	AN, CAN, OPAN, OPCAN			
Chiropractic	DC			
Colon / Rectal Surgery	CCRS, CRS, OPCCRS, OPCRS			
Dermatology	CD, D, OPCD, OPD			
Emergency Medicine	CEM, EM, OPCEM, OPEM			
Family Practice	CFP, FP, OPCFP, OPFP			
General Practice	GP, OPGP			

Internal Medicine	CIM, IM, OPCIM, OPIM			
Internal Medicine - Cardiac Electrophys.	CIM-CE, IM-CE, OPCIM-CE, OPIM-CE			
Internal Medicine - Cardiology	CIM-CD, IM-CD, OPCIM-CD, OPIM-CD			
Internal Medicine - Cardiovascular	CIM-CVD, IM-CVD, OPCIM-CVD, OPIM-CVD			
Internal Medicine - Critical Care	CIM-CCM, IM-CCM, OPCIM-CCM, OPIM-CCM			
Internal Medicine - Diagnostic Immunology	CIM-DL, IM-DL, OPCIM-DL, OPIM-DL			
Internal Medicine - Endocrinology	CIM-END, IM-END, OPCIM-END, OPIM-END			
Internal Medicine - Gastroenterology	CIM-GE, IM-GE, OPCIM-GE, OPIM-GE			
Internal Medicine - Geriatric Medicine	CIM-GM, IM-GM, OPCIM-GM, OPIM-GM			
Internal Medicine - Hematology	CIM-HEM, IM-HEM, OPCIM-HEM, OPIM-HEM			
Internal Medicine - Infectious Diseases	CIM-ID, IM-ID, OPCIM-ID, OPIM-ID			

Internal Medicine - Nephrology	CIM-NEPH, IM-NEPH, OPCIM-NEPH, OPIM-NEPH			
Internal Medicine - Medical Oncology	CIM-ONCL, IM-ONCL, OPCIM-ONCL, OPIM-ONCL			
Internal Medicine - Pulmonary Diseases	CIM-PD, IM-PD, OPCIM-PD, OPIM-PD			
Internal Medicine - Rheumatology	CIM-RHE, IM-RHE, OPCIM-RHE, OPIM-RHE			
Neurological Surgery	CNS, NS, OPCNS, OPNS			
Nuclear Medicine	CNUM, NUM, OPCNUM, OPNUM			
Obstetrics / Gynecology	COG, OG, OPCOG, OPOG			
Ophthalmology	CO, O, OPCO, OPO			
Orthopedic Surgery	COS, OPCOS, OPOS, OS			
Otolaryngology	COL, OL, OPCOL, OPOL			
Physical Medicine / Rehabilitation	CPMR, OPCPMR, OPPMR, PMR			

Plastic Surgery	CPS, OPCPS, OPPS, PS			
Podiatry	DPM			
Preventative Medicine	CPM, OPCPM, OPPM, PM			
Psychiatry / Neurology	CPN, OPCPN, OPPN, PN			
Psychology	PSY			
Surgery	CS, OPCS, OPS, S			
Thoracic Surgery	CTS, OPCTS, OPTS, TS			
Urology	CU, OPCU, OPU, U			

\*A complete list of the Physician Specialty Classification Codes can be confirmed on the Workers' Compensation Board website at:  
<http://www.wcb.ny.gov/content/main/hcpp/MedReg/SpecialtyClassifications.jsp>

## New York State Workers' Compensation Dispute Resolution Program Appeal Form For Employees Eligible for the Medical Evaluation Program (MEP)

**Instructions to Employee:** Complete Part I of this form and immediately take it to your Treating Physician who must complete Part II. Your Treating Physician must return this form to National Medical Reviews, Inc. (NMR) within three (3) business days of notification by your Employing Agency to return to work. Failure to comply may result in leave without pay status. **You cannot file this appeal on your own behalf; this appeal form must also be completed and submitted to NMR by your Treating Physician.**

**Part I: To be completed by Employee (Please print or type)**

Date	Date Notified to Return to Work	
Employee Name (first, middle, last)	Social Security Number	
Home Address	Home Telephone Number	
	SIF Carrier Case Number (Eleven digits) _____ - _____	
Employing Agency Name	Work Address	
Work Phone Number		
Date and brief description of the injury/illness resulting in your Workers' Compensation claim: (ATTACH ADDITIONAL SHEETS)		
Employee Signature	Negotiating Unit (NU):	NU Code:

**Part II: To be completed by Employee's Treating Physician (Please print or type)**

**Instructions to Treating Physician:** Complete Part II of this form and immediately return it with complete and comprehensive medical documentation that substantiates the employee's degree of disability. A NMR Physician will review the medical records and documentation sent by you and the Evaluation Physician and will render a determination in regard to the degree of disability that agrees with your determination or that of the Evaluation Physician. NMR must receive this completed form (including all necessary medical documentation) within three (3) business days of notification by the Employing Agency to the employee to return to work. Failure to comply may result in leave without pay status for the employee. **You may mail or fax completed forms and supporting documentation to:**

**National Medical Reviews, Inc.**  
**260 Knowles Ave, Suite 330**  
**Southampton, PA 18966**  
**Fax: (215) 352-7801 / Toll Free (866) 357-9045**  
**Phone: (215) 352-7800 / Toll Free (800) 283-8196**

Please follow all faxed copies with a copy by mail or overnight delivery.

Diagnosis: [ATTACH ADDITIONAL MEDICAL RECORD DOCUMENTATION]

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Treatment Plan: [ATTACH ADDITIONAL MEDICAL RECORD DOCUMENTATION]

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Prognosis: [ATTACH ADDITIONAL MEDICAL RECORD DOCUMENTATION]

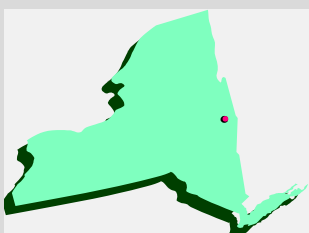
---

Estimated Degree of Disability: \_\_\_\_\_%

Treating Physician's Signature of Attestation:	Address:
Name: (Please print)	Telephone Number: (        )



# Dispute Resolution Program



## New York State Workers' Compensation Program

*For NYS Employees represented by:*

- **New York State Correctional Officers and Police Benevolent Association, Inc. (NYSCOPBA) in the Security Services Unit**
- **Council 82 in the Security Supervisors Unit**

- **Police Benevolent Association of New York State, Inc. (PBANYS) in the Agency Police Services Unit (APSU)**

*Administered by:*

**National Medical Reviews, Inc.**

**260 Knowles Avenue, Suite 330**

**Southampton, PA 18966**

**Phone: 215-352-7800/Toll free: 800-283-8196**

**Fax: 215-352-7801/Toll free: 866-357-9045**

### **What is the Medical Evaluation Program (MEP)?**

The Medical Evaluation Program (MEP) is a program that provides eligible employees who suffer a work-related injury or illness with an expedited, independent examination arranged by the New York State Insurance Fund (SIF). A SIF Evaluating Physician will determine your degree of disability. This determination is used by your Employing Agency as the basis for its decision to make a Light Duty Assignment.

### **What is the Dispute Resolution Program (DRP)?**

The Dispute Resolution Program (DRP) provides eligible employees with a process to review conflicting medical opinions regarding your degree of disability for a work-related injury or illness.

The DRP affords you the opportunity for an independent, third party medical review, in those instances where the decision of the Evaluating Physician does not agree with your Treating Physician regarding your degree of disability.

**What is the effect of the Evaluating Physician's determination on the MEP?**

If the Evaluating Physician determines that your degree of disability is greater than fifty percent (50%), you continue to receive workers' compensation leave benefits at full-pay.

If the Evaluating Physician determines that your degree of disability is fifty percent (50%) or less, the Evaluating Physician must also assess your estimated physical capabilities and expected return to work.

**When did the DRP become effective?**

A work-related injury or illness that occurred on or after April 15, 1993 and was in dispute regarding the degree of disability on or after November 1, 1998 is eligible for the DRP.

**Who performs the third party medical review?**

National Medical Reviews, Inc. (NMR), an independent medical review organization dedicated to providing evidenced-based medical reviews, will issue an independent, third party review determination regarding your degree of disability.

Dispute resolution reviews are conducted by physicians selected from NMR's extensive panel of

more than five hundred (500) physicians representing twenty six (26) medical disciplines. NMR physicians, who are board certified in their specialties and authorized by the New York State Workers' Compensation Board (Board), will evaluate your medical records. Assignments for appeals will be made according to the specific type of injury or illness involved. For example, heart diagnoses will be reviewed by a cardiologist, surgical diagnoses by a surgeon, etc.

NMR assures that appeals are reviewed by members of a neutral panel of physicians. These physicians must adhere to NMR's confidentiality and conflict of interest requirements. A Reviewer must maintain the confidentiality of the personal health information provided and must decline to review any case where he/she has been involved personally or professionally.

#### **Which cases are eligible for dispute resolution?**

Your case is eligible for dispute resolution if you have elected to participate in the MEP, and

- a. your Treating Physician determines that you have an injury/illness resulting in a disability of greater than fifty (50) percent and the Evaluating Physician determines that you have an injury/illness resulting in a disability of fifty (50) percent or less; or
- b. your Treating Physician determines that a disability exists and the Evaluating Physician determines you have no disability.

In either of these situations, if your Treating Physician's determination does not agree with the Evaluating Physician's determination, your Treating Physician may appeal on your behalf.

#### **Who can initiate the request for dispute resolution?**

Requests for dispute resolution must be initiated on your behalf by your Treating Physician using a Dispute Resolution Program Appeal Form (Appeal Form). You can obtain this Appeal Form from your Employing Agency.

You are responsible for providing the Appeal Form to your Treating Physician, informing him/her of the appeal process and requesting that he/she submit the appeal to NMR.

Your Treating Physician is responsible for providing NMR with a completed Appeal Form and all medical documentation to substantiate the degree of disability determination.

The Evaluating Physician's report will be provided by the SIF to NMR if it was not received from your Treating Physician.

**When must the Treating Physician submit the appeal to NMR?**

Your Treating Physician must submit the appeal to NMR during the Appeal Period. For the MEP, the Appeal Period is three (3) business days from the time that you are notified to return to work. Business day means any day Monday through Friday, with the exception of holidays observed by the State as an employer.

The time of day that you receive your notification is important in determining the first day of the Appeal Period. If your notification to return to work occurs prior to noon, that is the first day of the Appeal Period. If the notification occurs at noon, afternoon or on a non-business day, the next business day is the first day of the Appeal Period.

**What time frames must be followed by NMR?**

When NMR receives your appeal, NMR must immediately request supporting medical documentation from the Evaluating Physician (if it was not received from your Treating Physician). Once NMR receives complete medical documentation from both the Treating and Evaluating Physicians, NMR will complete the review within seven (7) calendar days. This seven-day period is the Program Review Period. NMR will report, in writing, the Reviewing Physician's decision to uphold the Treating or Evaluating Physician's determination within the Program Review Period. The outcome of the review shall be reported in writing to you, your Employing Agency, your Treating Physician, the Evaluating Physician, your bargaining unit and the SIF.

**What are the consequences of missing a deadline?**

- a. If your Treating Physician's appeal including all necessary medical documentation is not received by NMR within the Appeal Period, and you do not return to work from the work-related injury or illness, you will remain in or be placed in Leave Without Pay (LWOP) status until an appeal is received.
- b. If NMR's decision is not completed within the Program Review Period and you had a work-related injury or illness, you (either working, on LWOP or charging accruals) will be placed in Workers' Compensation Leave full-pay status on the next assigned work day until NMR's decision is rendered.

**What is the payroll status of employees during the Appeal Process?**

- a. If you return to work in a light duty, modified duty or full duty assignment pending the outcome of an appeal, you will receive full-pay.

- b. If the three days of LWOP ends prior to the expiration of the Appeal Period [three (3) business days], you will be allowed to use leave credits until the Appeal Period expires.
- c. Following the three days of LWOP and if your appeal is received by NMR during the Appeal Period, you will be allowed to charge available leave credits for the number of days in the Program Review Period [up to seven (7) calendar days] pending the outcome of the appeal.

#### **What happens if the NMR Physician finds in favor of the Treating Physician?**

If NMR finds in favor of your Treating Physician's determination of your degree of disability, your Employing Agency will advise you through a telephone call and letter not to report to work until further notification. The appropriate Workers' Compensation Leave will be retroactive to the first day of LWOP relating to the disputed degree of disability for a work-related injury or illness.

#### **What happens if the NMR physician finds in favor of the Evaluating Physician?**

If the NMR physician finds in favor of the Evaluating Physician's determination of degree of disability, your Employing Agency will notify you to report to work in a medically appropriate assignment. If you fail to report to work, you will be placed in LWOP status. Any leave credits used during the Appeal Period and/or Program Review Period will not be returned to you. The period of Workers' Compensation Leave without charge to credits will not be affected by an adverse decision in the DRP. If, at a subsequent hearing of the Board, the Appeal Period or Program Review Period is found compensable, restoration of such leave credits will be proportional to the wage award.

Once you are notified by NMR of the Reviewing Physician's determination, there is no further appeal under the DRP. Requests for further appeals beyond the DRP pertaining to issues of eligibility for statutory benefits must be made to the Board pursuant to the New York State Workers' Compensation Law.

#### **What happens after the appeal is filed?**

In addition to the Dispute Resolution Program Appeal Form, there are two letters you will receive as part of the dispute resolution process:

**Acknowledgment letter** advising you that the appeal was received by NMR and that all medical documentation was included. If all medical documentation was not received, your appeal will be considered invalid. The appeal cannot be reviewed until NMR receives the necessary medical documentation.

**Review Determination letter** advising you of the outcome of your appeal. The NMR Reviewing Physician will either agree with your Treating Physician or agree with the Evaluating Physician on your degree of disability.

You will be contacted by your Employing Agency regarding the outcome of the review.

#### **How do I initiate an appeal through the DRP?**

- Obtain the New York State Workers' Compensation Dispute Resolution Program Appeal Form from your Employing Agency immediately upon receiving the notification by your Employing Agency to return to work.
- Complete the form by printing or typing all requested information in Part I, Employee Section of the Appeal Form.
- Sign your name at the bottom of Part I.
- Immediately take the form to your Treating Physician.
- Explain to your Treating Physician the importance of completing Part II of the form and submitting it to NMR **within three (3) business days of notification by your Employing Agency to return to work.** Failure to comply may result in additional leave without pay.

**NOTE: You cannot file this appeal on your own behalf. Only your Treating Physician can file this appeal.**

#### **Instructions to Treating Physician:**

- Type or print all requested information in Part II of the Appeal Form.
- Attach all additional medical documentation needed to substantiate the employee's degree of disability to the completed Appeal Form.
- Sign your name at the bottom of Part II.
- Send the completed Appeal Form and any additional medical documentation to NMR by overnight mail or facsimile **within (3) business days of notification by the Employing Agency to the employee to return to work.** Any information sent via facsimile should be followed with a copy by mail.
- NMR mailing address:
  - National Medical Reviews, Inc.**
  - 260 Knowles Avenue, Suite 330
  - Southampton, PA 18966
  - Phone: 215-352-7800 / Toll free: 800-283-8196
  - Fax: 215-352-7801 / Toll free: 866-357-9045

- You will receive a copy of the NMR physician's determination which will agree with either your determination or that of the Evaluating Physician in regard to the Employee's degree of disability.

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The Department of Civil Service, the State Insurance Fund and the Workers' Compensation Board administer the Workers' Compensation Program.

New York State Department of Civil Service  
Empire State Plaza, Core 1  
Albany, NY 12239

WC/DRP/2-12

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It is the policy of the State of New York Department of Civil Service to provide reasonable accommodation to ensure effective communication of information in benefits publications to individuals with disabilities. If you need an auxiliary aid or service to make benefits information available to you, please contact your Personnel Office.

**DISPUTE RESOLUTION PROGRAM  
MONTHLY REPORT  
December 2016**

Employee Group (Name and Negotiating Unit)	Pending Appeals – From Prior Month(s)	Appeals Received – Current Month	Valid Appeals – Current Month	Pending Appeals – End of Month	Appeals Agree Evaluating Physician	Appeals Agree Treating Physician	Valid Appeals Charged
NYSCOPBA - Security Services Unit (01)							
NYSCOPBA - Security Services Unit (21)							
PBANYS – Agency Police Services Unit (31)							
Council 82 - Security Supervisors Unit (61)							
Council 82 - Security Supervisors Unit (91)							
UUP, Lifeguards – Professional Services Negotiating Unit (68)							
PBA - State Police Troopers Unit (07) <i>[Work Related]</i>							
PBA - State Police Troopers Unit (07) <i>[Non-Work Related]</i>							
PBA - State Police Supervisors Unit (17) <i>[Work Related]</i>							
PBA - State Police Supervisors Unit (17) <i>[Non-Work Related]</i>							
PIA - State Police Investigators Unit (62) <i>[Work Related]</i>							
PIA - State Police Investigators Unit (62) <i>[Non-Work Related]</i>							
M/C - State Police Management Confidential (18) <i>[Work Related]</i>							
M/C - State Police Management Confidential (18) <i>[Non-Work Related]</i>							
Totals							



**DISPUTE RESOLUTION PROGRAM  
MONTHLY REPORT  
December 2016**

NAME/SSN	Negotiating Unit #	Date Notified to Return to Work	Date Appeal Form Received	Date Valid Appeal Received	Date RP's Determination Completed	RP's Determination (Agree with EP or TP)	RP's Specialty	TP's Specialty	EP's Specialty

\*Include Pending Appeals from previous months.  
 \*\*If Appeal is deemed invalid, report date as "Invalid".  
 \*\*\*If RP's Determination dates are not yet determined, report date as "Pending".

**DISPUTE RESOLUTION PROGRAM**  
**Quarterly Medical Documentation Review Summary**  
**First Quarter 2017**

Exhibit III.F

<b>Specialty Classification</b>	<b>1st Quarter (Total #)</b>	<b>2nd Quarter (Total #)</b>	<b>3rd Quarter (Total #)</b>	<b>4th Quarter (Total #)</b>	<b>Total (#)</b>
Orthopedic Surgery					
Neurosurgery					
Chiropractic					
Physical Therapy					
Other: Neurology					
Other: Psychiatry					
Other: Internal Medicine					
Other: Otolaryngology					
Other: Oral Surgery					
Other: Obstetrics/Gynecology					
Other: Podiatry					
Other: Family Practice					
Other: Internal Medicine					
Other: Physical Medicine & Rehabilit.					
Other: Pain Medicine - Anesthesiology					

Invalid

Note: Quarterly Medical Documentation Review counts should tie to the quarterly count of Valid Appeals reported in the Monthly Appeals Summaries.

[Insert Vendor Address/Information Here]

**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 Period
	(A)	(B)	(C)	(D)	(E)	(A+B+C+D+E) = (F)	(G)	(F*G) = (H)
<b>Valid Appeal Fee</b>	\$XXX	\$XXX	\$XXX	\$XXX	\$XXX	\$X,XXX	80	\$XXX,XXX

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.