

**SEVENTH AMENDMENT  
TO  
GROUP INSURANCE POLICY NO. 30501-G  
IN EFFECT FOR  
THE STATE OF NEW YORK**

**THIS SEVENTH AMENDMENT** (the "Amendment") is entered into by the NEW YORK STATE DEPARTMENT OF CIVIL SERVICE ("DCS" or "Department" or "Employer") on behalf of the STATE OF NEW YORK and UNITED HEALTHCARE INSURANCE COMPANY OF NEW YORK, (the "Insurance Company") referred to collectively as "the Parties".

**WHEREAS**, the Group Insurance Policy No. 30501-G (the "Policy"), as amended, provides certain agreed upon services and medical and surgical benefits insurance coverage, but not basic hospital insurance nor mental health/substance abuse insurance for Members of certain Employee Groups covered by the Employer; and

**WHEREAS**, Effective June 1, 2006, the Parties desire to amend the Policy to update Appendix A – Standard Clauses For All New York State Contracts; and

**WHEREAS**, Effective for the period effective January 1, 2005 through December 31, 2008, unless otherwise specified, the Parties agree that the Insurance Policy will renew and the premium rates and performance standards will be amended throughout this period.

**NOW, THEREFORE**, in consideration of the mutual promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- I. Article VIII. Certificates of the Agreement is amended as follows:
  - A. Article VIII heading "Certificates" is deleted and replaced with "Certificates and Policy Amendments".
  - B. The following paragraph is added as the new last paragraph to Article VIII:

The Employer shall assume responsibility for doing initial filings with the New York State Department of Insurance for any amendments to the Group Policy and Certificates of Insurance that are created for the Employer, following review with the Insurance Company. The Insurance Company will provide copies of any filed documents to the New York State Department of Insurance as necessary, to fulfill its filing requirements.

- II. Section E of Article XIX. – Cash Management, is revoked in its entirety and replaced with the following new section E:

The interest rate used to credit the Cash Account for positive cash balances shall be [REDACTED] as set by the [REDACTED] in each month.

- III. Section F of Article XIX. – Cash Management, is revoked in its entirety and replaced with the following new section F:

The interest rate used to charge the Cash Account for negative cash balances shall be [REDACTED], as set by the [REDACTED] in each month.

- IV. Section H of Article XIX. – Cash Management is deleted in its entirety from this Article.

- V. A. Schedule of Premiums, is hereby revoked in its entirety and replaced with new Schedule of Premiums which is attached to this amendment as Exhibit A, and is effective for the period January 1, 2005 through December 31, 2008 unless stated otherwise in Exhibit A.

B. Article XV, Performance Standards, is hereby revoked in its entirety and replaced with new Article XV, Performance Standards which is attached to this amendment as Exhibit B, and is effective for the period January 1, 2005 through December 31, 2008 unless stated otherwise in Exhibit B.

- VI. The Agreement is amended to incorporate the following new article as follows: Article XXVII, Savings and Return of Investment Guarantees, which is attached to this amendment as Exhibit C.

- VII. Appendix A - Standard Clauses for All New York State Contracts is hereby revoked in its entirety and replaced with new Appendix A – Standard Clauses for all New York State Contracts which is attached to this amendment as Exhibit D, and is effective from June 1, 2006.

- VIII. Except as expressly amended by this Seventh Amendment, all the terms and conditions of the original Agreement and any amendments thereto shall remain in full force and effect.

- IX. This Amendment shall be deemed effective January 1, 2005 through December 31, 2008 unless otherwise specified.

**IN WITNESS WHEREOF**, the Parties hereto have hereunder signed this Amendment No. 7 to Policy Number 30501-G on the day and year appearing opposite their respective signatures.

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

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE**

**NANCY G. GROENWEGEN  
COMMISSIONER**

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

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

***UNITED HEALTHCARE INSURANCE COMPANY OF NEW YORK***

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 which executed the above instrument; and that (s)he signed his/her name thereto.

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NOTARY PUBLIC

**SCHEDULE OF PREMIUMS**

**MEDICAL/SURGICAL  
BENEFITS INSURANCE**

The following premium rates shall be in effect for the periods as indicated:

	<b><u>Premium Rate per Employee</u></b> <b><u>for New York Medical Enhancement Benefits</u></b>			
	<b><u>Employee Group with Plan Changes</u></b>		<b><u>Employee Group without Plan Changes</u></b>	
<b>Calendar Year</b>	<b>Individual Insurance</b>	<b>Family Insurance</b>	<b>Individual Insurance</b>	<b>Family Insurance</b>
	(Monthly/ Biweekly)	(Monthly/ Biweekly)	(Monthly/ Biweekly)	(Monthly/ Biweekly)
<b>2005</b>	\$20.39/\$9.38	\$48.40/\$22.28	\$20.38/\$9.38	\$48.37/\$22.26
<b>2006</b>	\$29.37/\$13.52	\$69.35/\$31.92	\$28.96/\$13.33	\$68.37/\$31.47
<b>2007</b>	\$37.19/\$17.12	\$88.37/\$40.67	\$37.26/\$17.15	\$88.53/\$40.75
<b>2008</b>	\$38.75/\$17.79	\$89.86/\$41.25	—	—

The Employer shall furnish to the Insurance Company within 3 months after each premium due date a written statement showing the number of Employees insured for Personal Insurance only and the number insured for Personal and Dependent Insurance, as of such due date.

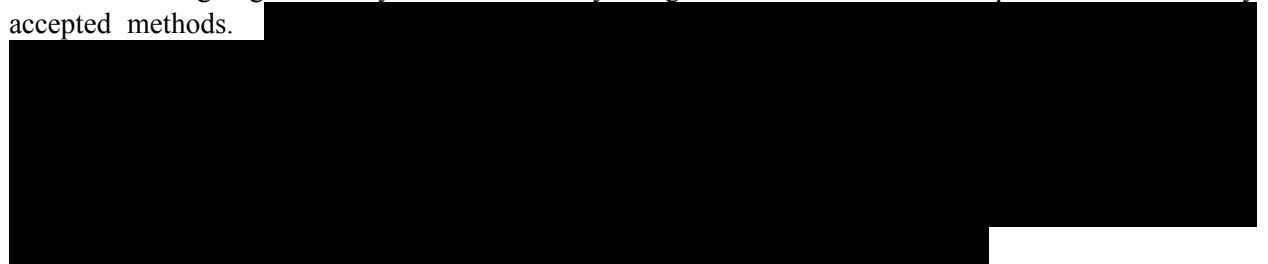
The premium for Employees accounted for on a bi-weekly basis shall be the daily premium rate multiplied by 14. The daily premium rate shall be calculated by multiplying the monthly premium rate by 12 and dividing the product by the number of days in the calendar year for which the premium is in effect.

The premium rates for each calendar year period have been established with a [REDACTED] margin. The Employer guarantees an additional margin payment equal to the difference between [REDACTED] margin and [REDACTED] margin. In the event that the emerging annual experience results in a deficit, the Employer agrees to make additional premium payments upon notification by the Insurance Company equal to the lesser of [REDACTED] of the earned premium for year 2005, 2006, and 2007 and [REDACTED] for year 2008 or the amount of the deficit. The due date on this additional payment, if applicable, is April 15th in the year following the deficit.

**ARTICLE XV. PERFORMANCE STANDARDS.**

The Insurance Company agrees to a Performance Standards Program in the following areas of Policy administration: (a) claim payment accuracy, (b) customer service accuracy, (c) claim turnaround time, (d) telephone blockage, (e) telephone speed to answer, and (f) telephone abandonment rate. This program includes Group Policy Nos. 30500-G, 30501-G and 30502-G as they are combined on a claim payment basis. These standards apply to the medical benefits and are effective for the period January 1, 2005 through December 31, 2005 and each annual period, otherwise referred to the "Guaranteed Period" thereafter while the contract is in force unless stated otherwise.

If the Insurance Company's level of performance falls below the established standards for a Guarantee Period, financial penalties shall be assessed the Insurance Company by the Employer. Measurement of each of the foregoing areas may be established by using statistical estimate techniques or other mutually accepted methods.



Additional performance standards may be established for other areas of policy administration as mutually agreed to between the parties. The Employer and the Insurance Company shall agree on the implementation date(s), the level of the standard(s) and the penalty(ies) to apply.

(a) **Claim Payment Accuracy.** Claim payment accuracy shall measure any mispayment of benefits caused by the Insurance Company. The claim payment accuracy rate is measured on a calendar year basis and is equal to the number of claims paid correctly divided by the number of claims reviewed, as shown in the formula below.

*Formula for Claim Payment Accuracy:*

$$\text{Claim Payment Accuracy Rate} = \frac{\text{Number of Claims Paid Correctly}}{\text{Number of Claims Reviewed}}$$

*Standard for Claim Payment Accuracy:*



*Performance Penalty for Claim Payment Accuracy:*

If the Claim Payment Accuracy Rate, as calculated above, is determined to be statistically significant (i.e. the upper confidence limit is less than the standard) the difference between the Claim Payment Accuracy Rate and the standard shall be used to calculate any penalty due.

- For each [REDACTED], or part thereof, by which the Claim Payment Accuracy Rate falls below [REDACTED] for a calendar year, a penalty of [REDACTED] shall be assessed.
- The maximum penalty for this measurement shall be [REDACTED] per calendar year.
- An additional penalty of [REDACTED] shall be assessed if the Claim Payment Accuracy Rate is below the standard and is lower, by [REDACTED] or greater, than that for the prior year.

[REDACTED]

(b) **Customer Service Accuracy.** Customer Service Accuracy shall measure the accuracy of claims processed by the Insurance Company relative to items that are visible to, and affect, the customer (i.e. the Enrollee or the provider).

*Formula for Customer Service Accuracy:*

$$\text{Customer Service Accuracy Rate} = \frac{\text{Number of Claims With No Customer Service Errors}}{\text{Number of Claims Reviewed}}$$

*Standard for Customer Service Accuracy:*

[REDACTED]

*Performance Penalty for Customer Service Accuracy:*

- If the Customer Service Accuracy Rate, as calculated above, is determined to be statistically significant (i.e. the upper confidence limit is less than the standard) the difference between the Customer Service Accuracy Rate and the standard shall be used to calculate any penalty due.
- For each [REDACTED], or part thereof, by which the customer service accuracy rate falls below [REDACTED] for a calendar year, a penalty of [REDACTED] shall be assessed.
- The maximum penalty for this measurement shall be [REDACTED] per calendar year.

(c) **Claim Turnaround Time.** Claim Turnaround Time shall measure the number of calendar days elapsed from the time the Insurance Company receives a claim to the time a claim action is taken (e.g. a benefit check is issued, a benefit statement is mailed, additional information is requested, etc.). The Claim Turnaround Time standard pertains only to non-participating provider claims.

*Formula for Claim Turnaround Time:*

$$\text{Turnaround Time Rate} = \frac{\text{Number of Claims Within the Standard}}{\text{Number of Claims Reviewed}}$$

*Standards for Claim Turnaround Time:*

- [REDACTED] of claims received by the Insurance Company in a calendar year must be processed within [REDACTED] of receipt.

- [redacted] of claims received by the Insurance Company in a calendar year must be processed within [redacted] of receipt.

*Performance Penalty for Claim Turnaround Time:*

- If the Turnaround Time Rate, as calculated above, is determined to be statistically significant (i.e. the upper confidence limit is less than the standard) the difference between the Turnaround Time Rate and the standard shall be used to calculate any penalty due.
- For each [redacted] or part thereof, by which the Turnaround Time Rate falls below the standard in each category for a calendar year, a penalty of [redacted] shall be assessed.
- The maximum penalty for this measurement shall be [redacted] per calendar year.

(d) **Telephone Blockage.** Telephone Blockage shall measure overflow calls to the dedicated claims office that sequence through its automated call distribution system in a calendar year. Overflow calls are calls that are placed to the 800# and receive a busy signal at the point they are connected to the dedicated claims office (not including the Managed Physical Medicine Program but effective July 1, 2002 including calls to the Care Coordination Unit). Telephone Blockage shall be tracked by the Call Management System (CMS) and reported by the Monthly Trunk Group Summary Report.

*Formula for Telephone Blockage:*

$$\text{Telephone Blockage Rate} = \frac{\text{Number of Overflow Calls}}{\text{Number of Calls Placed to the 800\#}}$$

*Standard for Telephone Blockage:*

[redacted] blockage.

*Performance Penalty for Telephone Blockage:*

If the Telephone Blockage Rate, as calculated above, is determined to be above the standard, the difference between the Telephone Blockage Rate results and the standard shall be used to calculate any penalty due.

- For each [redacted], or part thereof, by which the Telephone Blockage Rate exceeds [redacted] for a calendar year, a penalty of [redacted] shall be assessed.
- The maximum penalty for this measurement shall be [redacted] per calendar year.

(e) **Telephone Speed to Answer.** Telephone Speed to Answer shall measure the number of calls to the dedicated claims office that sequence through its automated call distribution system that are answered by a service representative within [redacted] seconds relative to the total calls received by the dedicated claims office (not including the Managed Physical Medicine Program but effective July 1, 2002 including calls to the Care Coordination Unit) in a calendar year. Telephone Speed to Answer shall be tracked by the Call Management System (CMS) and reported by the Monthly Split/ Skill Call Profile Report.

*Formula for Telephone Speed to Answer:*

$$\text{Telephone Speed to Answer Rate} = \frac{\text{Number of Calls answered within [redacted] seconds}}{\text{Number of Calls Received by the 800\#}}$$





The Employer shall develop audit rules, to be approved by the Insurance Company, to define the measurement of the Insurance Company's performance against these standards. These audit rules may be amended or changed by the Employer, with the consent of the Insurance Company, for each annual audit period. The rules shall not be construed as preventing the Employer's auditors or the Insurance Company from exercising independent professional judgment in the performance of the audit or in the review of the audit results, respectively.

**Change in Reporting Format.**

The Insurance Company reserves the right from time to time to replace any report or change the format of any report referenced in these standards. In such event, the changes must be mutually agreed upon by both parties and the report will be modified to the degree necessary to carry out the intent of the parties.

**ARTICLE XXVII. SAVINGS AND RETURN ON INVESTMENT GUARANTEES**

**1. Disease Management Services**

A savings/return on investment (ROI) guarantee is in place for the initial three years of the program as described in letters dated August 7, 2006 and September 29, 2006 containing the Insurance Company's program proposal to the Employer. The savings/ROI guarantee covers the period of March 1, 2007 until February 28, 2010.

**2. Kidney Resource Services (KRS) Program**

A savings guarantee is in place for the initial four years of the Kidney Resource Services program as described in the January 19, 2007 letter containing the Insurance Company's program proposal to the Employer. The savings guarantee covers the period of July 1, 2008 until June 30, 2012.

**3. Prospective Procedure Review**

A savings guarantee for the first year of the expanded Benefits Management Program for Prospective Procedure Review was negotiated with the external vendor on behalf of the Employer and is the sole responsibility of the external vendor in accordance with the April 9, 2008 letter to the Employer.

**APPENDIX A  
STANDARD CLAUSES FOR ALL NEW YORK STATE 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, licensor, 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 previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment 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).
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, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital 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.

**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 warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants 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 contractor'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) *FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.* All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number; i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, 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 purpose 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 New York State's Central Accounting System by the Director of Accounting Operations, 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, 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:

(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, 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; or (iii) banking services, insurance policies or the sale of securities. 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 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 XI-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 State Finance Law §165. (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:

Department of Economic Development  
Division for Small Business  
30 South Pearl Street – 7<sup>TH</sup> Floor  
Albany, New York 12245  
Tel. 518-292-5220

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

Department of Economic Development  
Minority and Women's Business Development Division  
30 South Pearl Street – 2<sup>nd</sup> Floor  
Albany, New York 12245  
<http://www.empire.state.ny.us>.

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. Contact the Department of Economic Development for a current list of jurisdictions subject to this provision.

22. **PURCHASES OF APPAREL.** In accordance with State Finance Law Section 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) Such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hour laws and workplace safety laws; and (ii) Vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized for this contract by the bidder.

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