
AGREEMENT NO. C000625

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
and
VALUEOPTIONS, INC.

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 ValueOptions, Inc. ("Contractor"), a corporation authorized to do business in the State of New York with a principal place of business located at 4 British American Boulevard, Latham, NY 12110, and collectively referred to as "the Parties."

WITNESSETH

WHEREAS, Civil Service Law Article XI authorizes and directs the President of the State Civil Service Commission and New York State Department of Civil Service ("President") to establish a health benefit plan for the benefit of State Employees, Retirees, and their Dependents, and for the benefit of Participating Employers' Employees, Retirees, and their Dependents; and

WHEREAS, Civil Service Law Article XI authorizes and directs the President to purchase a contract or contracts to provide the benefits under the plan of health benefit; and

WHEREAS, The Empire Plan Mental Health and Substance Abuse Program ("Program") provides those mental health and substance abuse health benefits, purchased by the President, for the benefit of those stated above and shall be administered in accordance with New York State laws and regulations including the Civil Service Law, the State Finance Law Article XI, and their respective implementing regulations, including but not limited to the Regulations of the Department of Civil Service (President's Regulations); and

WHEREAS, on March 13, 2014 the Department of Civil Service issued a Request for Proposal (RFP) entitled "Mental Health and Substance Abuse Program for The Empire Plan, Excelsior Plan and Student Employee Health Plan" to secure the services of a qualified organization to provide Program Services as defined in the RFP; and

WHEREAS, a conditional award of the Program was made to ValueOptions on January 8, 2015; and

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

THEREFORE, the Parties agree as follows:

ARTICLE I: DEFINITION OF TERMS

- 1.1.0 Actual Average Unit Cost (AAUC)** means the average unit cost for Network Coverage/Services paid during the Plan Year. The calculation of the AAUC shall be equal to the amounts that would be paid by the Contractor to Network Providers for Network Outpatient Services and Network Inpatient/ALOC Services for Plan primary claims only and prior to the application of Copayment and Bad Debt and Charity assessments.
- 1.2.0 Administrative Fee** means the monthly fee that the Contractor charges the MHSA Program for all administrative services, exclusive of the Shared Communication Expense as calculated on a per Enrollee contract per Month basis.
- 1.3.0 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.
- 1.4.0 Alternate Level of Care (ALOC)** means residential treatment centers, halfway houses, group homes, partial hospitalization programs or continuing day treatment programs which satisfy the requirements of an Approved Facility.
- 1.5.0 Applied Behavioral Analysis (ABA)** means a behavioral health service for teaching children with Autism Spectrum Disorder through intensive skill training.
- 1.6.0 Approved Facility** means a general acute care or psychiatric hospital or clinic under the supervision of a physician. If the hospital or clinic is located in New York State, it must be certified by the Office of Alcoholism and Substance Abuse Services of the State of New York or according to the Mental Hygiene Law of New York State. If located outside New York State, it must be accredited by the Joint Commission on Accreditation of Health Care Organizations for the provision of mental health, alcoholism or drug abuse treatment, Partial Hospitalization, Intensive Outpatient Program, Day Treatment, 24 Hour Extended Bed and 72 Hour Crisis Bed will be considered approved facilities if they

satisfy the foregoing requirements. In all cases other than an emergency, the facility must also be approved by the Contractor. Residential treatment centers, halfway houses and group homes will be considered approved facilities, if they satisfy the requirements above and admission is certified by the Contractor.

1.7.0 Business Day(s) means every Monday through Friday, except for days designated as Business Holidays.

1.8.0 Business Holiday(s) means legal holidays observed by the State.

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

1.10.0 Call Center Hours means 24 hours a Day, 365 Days a year.

1.11.0 Authorization or Authorized means a determination by the Contractor that mental health care or substance abuse care or proposed care is a Medically Necessary, Covered Service in accordance with the terms of the Agreement.

1.12.0 Child(ren) means children under 26 years of age, including natural children, legally adopted children, children in a waiting period prior to finalization of adoption, Enrollee stepchildren and children of the Enrollee's domestic partner. Other children who reside permanently with the Enrollee in the Enrollee's household and are chiefly dependent on the Enrollee are also eligible, subject to a statement of dependence and documentation.

1.13.0 Clinical Manager means licensed Ph.D.; clinical psychologist, licensed professional registered nurse or licensed master's level certified social worker with a minimum of three to five years of previous position-related clinical experience in mental health and/or substance abuse treatment or other licensed, qualified individual as approved by the MHSA Program.

1.14.0 Clinical Referral Line means the clinical resource and referral service called prior to receiving any Covered Services to obtain network referrals or benefit information. It is available 24 hours a Day, 365 Days a year.

1.15.0 Coinsurance means, for Non-Network Approved Facility services, the difference between the billed charge and the percentage covered; and, for non-network Practitioner services, the difference between the Reasonable and Customary charge and the percentage

covered. The Plan's coinsurance maximum is shared between Basic Medical, the Hospital Program and the Mental Health and Substance Abuse Program.

1.16.0 Coinsurance Maximum means the sum of Coinsurance costs incurred under the Basic Medical Program and Non-Network Coverage under the Hospital Program and Mental Health and Substance Abuse Program. Copayments paid to a Network Practitioner also count toward meeting the Plan's Coinsurance Maximum. After the combined annual Coinsurance Maximum is reached, benefits are paid at 100 percent of Reasonable and Customary charges for non-network Covered Services.

1.17.0 Contractor means **ValueOptions, Inc**, the successful Contractor selected as a result of the evaluation of Offerors' Proposals submitted in response to the RFP and the Contractor who executed an Agreement with the Department to provide Program Services.

1.18.0 Copayment means the amount the Enrollee is required to pay per visit for Covered Services as specified by the benefit design of the Program.

1.19.0 Cost Share or Cost Sharing means the Enrollee's financial responsibility for Covered Services including Copayment, Deductible and Coinsurance.

1.20.0 Covered Services means Medically Necessary mental health and substance abuse care as defined under the terms of the MHSA Program, except to the extent that such care is otherwise limited or excluded under the MHSA Program.

1.21.0 Crisis Intervention Visits means an urgent assessment and history of a crisis state, a mental status exam, and a disposition. The treatment includes psychotherapy, mobilization of resources to defuse the crisis and restore safety, and implementation of psychotherapeutic interventions to minimize the potential for psychological trauma. The presenting problem is typically life threatening or complex and requires immediate attention to a patient in high distress.

1.22.0 Day(s) means calendar days unless otherwise noted.

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

1.24.0 Dedicated Call Center means a group of customer service representatives trained and capable of responding to a wide range of questions, complaints, and inquiries specific to

the MHSA Program. The customer service representatives are dedicated to the Program and do not work on any other accounts.

1.25.0 Deductible means the amount paid by the Enrollee each Calendar Year for Covered Services under the non-network portion before a Plan payment is made. Plan deductibles are shared between the Medical Program and the Mental Health and Substance Abuse Program. The amount applied toward satisfaction of the deductible will be the lower of the following: the amount actually paid for a Medically Necessary service under the non-network portion of the MHSA Program; or for Practitioner services, the Reasonable and Customary charge; or for Approved Facility services, the billed amount for such service.

1.26.0 Dependent means the spouse, domestic partner, and children under twenty-six (26) years of age of an Enrollee. Young adult dependent children age twenty-six (26) or over are also eligible if they are incapable of supporting themselves due to mental or physical disability acquired before termination of their eligibility for coverage under the New York State Health Insurance Program.

1.27.0 Dependent Survivor means the unremarried spouse, dependent child, or domestic partner who has not acquired another domestic partner, of an Enrollee who died after having had at least ten (10) years of service, who was covered as a dependent of the deceased Enrollee at the time of the Enrollee's death and who elects to continue coverage under NYSHIP following the three (3) month extended benefits period.

1.28.0 Disabled Lives Benefit means the benefits provided to an Enrollee who is Totally Disabled on the date coverage ends. The benefits are provided on the same basis as if coverage had continued with no change until the day the Enrollee is no longer Totally Disabled or for ninety (90) days after the date the coverage ended, whichever is earlier.

1.29.0 Emergency Care means care received for an emergency condition. An emergency condition is a medical or behavioral condition, the onset of which is sudden, that manifests itself by symptoms of sufficient severity, including severe pain, that a prudent layperson, possessing an average knowledge of medicine and health, could reasonably expect the absence of immediate medical attention to result in: placing the health of the person afflicted with such condition in serious jeopardy, or in the case of a behavioral condition placing the health of such a person or others in serious jeopardy; serious

impairment to such person's bodily functions; serious dysfunction of any bodily organ or part of such person; or serious disfigurement of such person.

1.30.0 Employee means "Employee" as defined in 4 NYCRR Part 73, as amended, or as modified by collective bargaining agreement.

1.31.0 Employer means "Employer" as defined in 4 NYCRR Part 73, as amended.

1.32.0 Enrollee means an "Employee" or "Dependent" enrolled in the Program with mental health/ substance abuse benefits.

1.33.0 ET means prevailing Eastern Time.

1.34.0 Guaranteed Average Unit Cost (GAUC) means the amounts as proposed by the Contractor for Network Outpatient Services and Network Inpatient/Alternative Level of Care (ALOC) Services in RFP Exhibits V.A.2 and V.A.3, respectively. The GAUC amounts shall be based on Plan primary claims only and be prior to the application of Copayment and Bad Debt and Charity assessments. The GAUC for Network Inpatient/ALOC Services may incorporate the inpatient professional service component pertaining to global reimbursement arrangements.

1.35.0 HIPAA means Health Insurance Portability and Accountability Act of 1996, as amended.

1.36.0 Inpatient Services means those services rendered in an Approved Facility to an Enrollee who has been admitted for an overnight stay and is charged for room and board.

1.37.0 Intensive Outpatient Program (IOP) is a freestanding or hospital-based program that provides Medically Necessary services more than once weekly. Intensive outpatient programs are used as a step-up from routine outpatient services, or as a step-down from acute inpatient, residential care or a partial hospital program. Intensive outpatient programs can be used to treat mental health conditions or substance abuse disorders, or can specialize in the treatment of co-occurring mental health conditions and substance-use disorders.

1.38.0 Key Subcontractor(s) means those vendors with whom the Contractor subcontracts to provide Program Services and incorporates as a part of the Contractor's Program Team.

1.39.0 Maximum Out-of-Pocket means the maximum out-of-pocket costs incurred by an Enrollee for network Copayments for the Medical, Hospital and Mental Health/Substance Abuse Programs, as required by the Affordable Care Act (ACA) for non-grandfathered Plans.

1.40.0 Medical Necessity/Medically Necessary means a Covered Service which the Contractor has certified to be: medically required; having a strong likelihood of improving the condition; and provided at the lowest appropriate level of care for the specific diagnosed condition, in accordance with both generally accepted mental health and substance abuse practices and the professional and technical standards adopted by the Contractor.

1.41.0 Mental Health Care means Medically Necessary care rendered by a covered Practitioner or Approved Facility and which, in the opinion of the Contractor, is directed predominately at treatable behavioral manifestations of a condition that the Contractor determines: is a clinically significant behavioral or psychological syndrome, pattern, illness or disorder; and substantially or materially impairs a person's ability to function in one or more major life activities; and has been classified as a mental disorder in the current American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders.

1.42.0 MHSA Program/Plan means the New York State Health Insurance Program's Empire Plan Mental Health and Substance Abuse Program, the Excelsior Plan Mental Health and Substance Abuse Program and the Student Employee Health Plan Mental Health and Substance Abuse Program administered by the New York State Department of Civil Service.

1.43.0 Mixed Services Protocol means the methodology for allocating the clinical and financial responsibility for covered MHSA services between the Medical Program contractor, Hospital Program contractor and the MHSA Program contractor.

1.44.0 Network Coverage/Services means all Medically Necessary services/days paid at the Network benefit level including Medically Necessary services/days rendered by a Non-Network Provider when the Contractor determines that it is appropriate for either access or clinical reasons. Network Services shall not include non-network services where the Contractor had no opportunity to direct the care or Transition of Care services.

1.45.0 Network Facility means an Approved Facility that has entered into a Network Provider agreement with the Contractor as an independent contractor. The records of the Contractor shall be conclusive as to whether a facility has a Network Provider agreement in effect on the date services are obtained. A Non-Network Facility can be considered a Network Facility on a case-by-case basis when approved by the Contractor.

1.46.0 Network Practitioner means a Practitioner who has entered into an agreement with the Contractor as an independent contractor to provide Covered Services. The records of the Contractor shall be conclusive as to whether a Practitioner had a Network Provider agreement in effect on the date services are obtained. A Non-Network Practitioner can be considered a Network Practitioner on a case-by-case basis when approved by the Contractor.

1.47.0 Network Provider means either a Network Practitioner or a Network Facility.

1.48.0 Non-Network Coverage means the level of reimbursement paid by the MHSA Program for Covered Services from a Non-Network Provider in compliance with the MHSA Program requirements outlined in the Agreement.

1.49.0 Non-Network Facility means an Approved Facility that has not entered into an agreement with the Contractor as an independent contractor to provide Covered Services.

1.50.0 Non-Network Practitioner means a Practitioner who has not entered into an agreement with the Contractor as an independent contractor to provide Covered Services. A Non-Network Practitioner can be considered a Network Practitioner on a case-by-case basis when approved by the Contractor.

1.51.0 Non-Network Provider means a Non-Network Practitioner or Non-Network Facility.

1.52.0 NYS means New York State.

1.53.0 NYSHIP means the New York State Health Insurance Program.

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- 1.54.0 Outpatient Services** means those services rendered in a Practitioner's office or in the department of an Approved Facility where services are rendered to persons who have not had an overnight stay and are not charged for room and board.
- 1.55.0 Partial Hospitalization** means a freestanding or hospital-based program that maintains hours of service for at least 20 hours per week and may also include half-day programs that provide services for less than 4 hours per day. A partial hospital/day treatment program may be used as a step-up from a less intensive level of care or as a step-down from a more intensive level of care and does not include an overnight stay.
- 1.56.0 Participating Agency (PA)** means any unit of local government such as school districts, special districts and district or municipal corporations which elects, with the approval of the President of the Civil Service Commission, to participate in the New York State Health Insurance Program.
- 1.57.0 Participating Employer (PE)** means a public authority, public benefit corporation, or other public agency, subdivision, or quasi-public organization of the State which elects, with the approval of the President of the Civil Service Commission, to participate in the New York State Health Insurance Program.
- 1.58.0 Pass-through Pricing** means the MHSA Program is charged the same mental health substance abuse services fee by the Contractor as was paid to the Network Provider.
- 1.59.0 Peer Advisor** means a psychiatrist or Ph.D. psychologist with a minimum of five (5) years of clinical experience who renders Medical Necessity decisions.
- 1.60.0 Physician** means a Doctor of Medicine (M.D.) or a Doctor of Osteopathy (D.O.). He or she must be legally licensed to practice medicine, without limitations or restrictions.
- 1.61.0 Plan Sponsor** means the Council on Employee Health Insurance, which is composed of the President of the Civil Service Commission, Director of the Governor's Office of Employee Relations, and the Director of the Division of Budget.
- 1.62.0 Plan Year** means the period from January 1st to December 31st in each year covered by this Agreement, unless specified otherwise by the Program.
- 1.63.0 PPACA or ACA** means Patient Protection and Affordable Care Act of 2010 and its implementing regulations.

1.64.0 Practitioner means:

1.64.1 A psychiatrist; or

1.64.2 A psychologist; or

1.64.3 A licensed and registered clinical social worker with at least three (3) years of post-degree experience who qualifies for the New York State Board for Social Work “R designation”. If services are performed outside New York State, the social worker must have the highest level of licensure awarded by that state’s accrediting body; or

1.64.4 A Registered Nurse Clinical Specialist or psychiatric nurse/clinical specialist: Advanced Practice nurses who hold a master’s or doctoral degree in a specialized area of psychiatric nursing practice nurse; or

1.64.5 A Registered Nurse Practitioner: a nurse with a master’s degree or higher in nursing from an accredited college or university, licensed at the highest level of nursing in the state where services are provided. Nurse Practitioners may diagnose, treat, and prescribe for a patient’s condition that falls within their specialty area of practice. This must be done in collaboration with a licensed psychiatrist qualified in the specialty involved and in accordance with an approved written practice agreement and protocols; or

1.64.6 Applied behavioral analysis provider or Certified Behavioral Analyst (CBA) provider: A provider who is certified as a behavioral analyst pursuant to a behavioral analyst certification board; or

1.64.7 Applied behavioral analysis or ABA Agency: An agency providing ABA services under the program oversight and direct supervision of a licensed provider and certified behavioral analyst. An ABA Agency may also employ ABA aides to deliver the treatment protocol of the ABA Provider.

1.64.8 Masters Level Clinician (MLC): A behavioral health clinician with a master’s degree or higher, including mental health practitioners licensed under Article 163 of the New York Education Law.

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

1.66.0 Program Services means all of the services to be provided by the Contractor as set forth in this Agreement.

1.67.0 Program Team means the Contractor and those Key Subcontractors and Affiliates, if any, utilized by the Contractor who collectively undertake and perform the Program Services which are the subject of the Agreement.

1.68.0 Proposal 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.

1.69.0 Provider means a Practitioner or Approved Facility that supplies Covered Services under the MHSA Program.

1.70.0 Provider Network means the Contractor's credentialed and contracted network of Network Practitioners and Network Facilities.

1.71.0 Reasonable and Customary means the lowest of:

1.71.1 The actual charge for services; or

1.71.2 The usual charge for services by the Provider for the same or similar service; or

1.71.3 The usual charge for services of other Providers in the same or similar geographic area for the same or similar service.

1.72.0 Referral means the process by which the Contractor's toll-free Clinical Referral Line refers an Enrollee to a Network Provider to obtain Covered Services.

1.73.0 Regulations of the President of the New York State Civil Service Commission means those regulations promulgated by the President of the Civil Service Commission under the authority of Civil Service Law Article XI, as amended, and including, but not limited to those regulations to be promulgated as 4 New York Code of Rules and Regulations (NYCRR) Part 73.

1.74.0 Retiree means any person defined as a Retiree pursuant to the terms of 4 NYCRR Part 73, as amended.

1.75.0 RFP or Procurement means the Request for Proposals entitled "Mental Health and Substance Abuse Program for The Empire Plan, Excelsior Plan and Student Employee Health Plan, dated March 13, 2014".

1.76.0 Shared Accumulator means the Coinsurance, Copayment and Deductible amounts shared between the MHSA, Medical and Hospital components of The Empire Plan, Student Employee Health Plan and Excelsior Plan.

1.77.0 Shared Communication Expense means the expense that the Contractor will be billed and must pay on a quarterly basis to contribute toward the cost of producing various Empire Plan and NYSHIP publications (i.e. provider directories, Choices Guides, At A Glance publications, etc) and distributing and mailing them to Enrollees.

1.78.0 Single Case Agreement means a unique agreement that the Contractor negotiates with a non-Network Provider to provide MHSA Program Network-level services for a specific Enrollee when there is insufficient access to a Network Provider within a certain geographic area or a Non-Network Provider possesses a unique specialty that is not currently possessed by a Network Provider within that geographic area.

1.79.0 State means New York State as a whole.

1.80.0 Structured Outpatient Rehabilitation Program (SOP) means a program that provides substance abuse care and is an operational component of an Approved Facility that is state licensed. If located in New York State, the program must be certified by the Office of Alcoholism and Substance Abuse Services of the State of New York. If the program is located outside New York State, it must be part of an Approved Facility accredited by the Joint Commission on Accreditation of Health Care Organizations as a hospital or as a health care organization that provides psychiatric and/or drug abuse or alcoholism services to adults and/or adolescents. The program must also meet all applicable federal, state and local laws and regulations. A Structured Outpatient Rehabilitation Program is a program, in which the patient participates, on an outpatient basis, in prescribed formalized treatment, including an aftercare component of weekly follow-up. In addition, Structured Outpatient Rehabilitation Programs include elements such as participation in support groups like Alcoholics Anonymous or Narcotics Anonymous.

1.81.0 Substance Abuse Care means Medically Necessary care provided by an eligible provider for the illness or condition that the Contractor has determined: is a clinically significant behavioral or psychological syndrome or pattern; and substantially or materially impairs a person's ability to function in one or more major life activities; and is a condition which has been classified as a substance abuse disorder in the current

American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders, unless such condition is otherwise excluded under this MHSA Program.

1.82.0 Summary Plan Description(s) (SPD) means the document(s) issued pursuant to and attached by reference to the Agreement. The SPD is issued to Enrollees and describes Program benefits. The SPD includes the initial SPD and amendments, if any.

1.83.0 Total Disability and Totally Disabled means that because of a mental health/substance abuse condition, the Enrollee cannot perform his/her job or the Dependent cannot perform the normal activities of a person that age.

1.84.0 Transition of Care means a benefit that provides Enrollees with the Network level of benefits for a period of 90 days to continue Covered Services that commenced with a network provider of the former Program contractor.

1.85.0 Urgent Care is care that does not meet the definition of emergency care but which should be provided early in the onset of symptoms in order to alleviate or prevent permanent disability, serious medical complications, loss of life or harm to the patient or others.

1.86.0 Utilization Review (UR) means a medical management program which reviews the Medical Necessity of mental health and substance abuse treatment. The review should be conducted by a team of licensed and/or certified psychiatric nurses, licensed clinical social workers ("R" status), board-certified or board-eligible psychiatrists and clinical psychologists, as appropriate, to determine whether proposed services are Medically Necessary for diagnosed condition(s). Utilization review includes certification, authorization, concurrent review and discharge planning.

1.87.0 Vestee means a former Employee who is entitled to continue benefits under NYSHIP because he/she has met all the requirements for NYSHIP coverage as a Retiree, except for age eligibility for pension, at the time employment terminates.

ARTICLE II: AGREEMENT DURATION AND AMENDMENTS

2.1.0 This Agreement, subject to prior approval by the Office of the Attorney General ("AG") and the Office of the State Comptroller ("OSC"), shall include five (5) years of Program Services, with one optional extension period not to exceed 11-months, at the sole discretion of the Department. It is the Department's intent that all Program Services and

contractual responsibilities shall begin effective upon the AG and OSC's approval no sooner than January 1, 2016 and shall be subject to the termination provisions contained herein. Said optional extension period is exercisable at the sole discretion of the Department and is subject to the approval of the AG and the OSC. Pricing during said extension, if exercised, shall be in accordance with the rates provided in this Agreement. The Department shall provide the Contractor notice of at least thirty (30) days prior to the end of the term of this Agreement, of any such election to extend this Agreement.

- 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 the 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 Contracts;
 - 4.1.4** Appendix C – Third Party Connection and Data Sharing Agreement;
 - 4.1.5** Appendix D – Participation by Minority Group Members and Women With Respect to State Contracts: Requirements and Procedures;
 - 4.1.6** Appendix D-1 - Minority and Women-Owned Business Enterprises-Equal Employment Opportunity Policy Statement;
 - 4.1.7** Appendix D-2 - MWBE Utilization Reporting Responsibilities under Article 15-A;

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

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

4.1.8b Exhibit B: RFP Amendments and the Request for Proposals entitled “Mental Health and Substance Abuse Program for The Empire Plan, Excelsior Plan and Student Employee Health Plan,” dated March 13, 2014 and Exhibit B-1, the official Department response to questions raised concerning the RFP, dated April 17, 2014;

4.1.8c Exhibit C: the Contractor's Proposal; Exhibit C-1: Written responses to the Management Interview, and Exhibit C-2: Related Materials Clarifying the Contractor's Proposal which includes the Contractor's responses to the Department's inquiries dated May 27, 2014 and July 2, 2014;

4.1.8d Exhibit D: The Summary Plan Descriptions;

4.1.8e Exhibit E: Guaranteed Average Unit Costs; and

4.1.8f Exhibit F: Empire Plan Mixed Services Protocol.

4.1.9 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:

4.1.9a First, Appendix A: Standard Clauses for All New York State Contracts;

4.1.9b Second, Appendix B: Standard Clauses for All Department of Civil Service Contracts;

4.1.9c Third, Appendix C: Third Party Data Connection and Data Exchange Agreement;

4.1.9d 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;

4.1.9e Fifth, any Amendments to the body of the Agreement;

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- 4.1.9f** Sixth, the body of the Agreement;
 - 4.1.9g** Seventh, Exhibit A: MacBride Act Statement and Non-Collusive Bidding Certification;
 - 4.1.9h** Eighth, Exhibit B: RFP Amendments and the Request for Proposals entitled “Mental Health and Substance Abuse Benefit Services for The Empire Plan, Excelsior Plan and Student Employee Health Plan,” and Exhibit B-1, the official Department response to questions raised concerning the RFP, dated April 17, 2014;
 - 4.1.9i** Ninth, Exhibit C: the Contractor's Proposal; Exhibit C-1: Written responses to the Management Interview; Exhibit C-2: Related Materials Clarifying the Contractor's Proposal which includes the Contractor's responses to the Department's inquiries dated May 27, 2014 and July 2, 2014;
 - 4.1.9j** Tenth, Exhibit D: the Summary Plan Description and Benefit Summaries;
 - 4.1.9k** Eleventh, Exhibit E: Guaranteed Average Unit Costs; and
 - 4.1.9l** Twelfth, Exhibit F: Empire Plan Mixed Services Protocol.

4.2.0 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** 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 pursuant to the Summary Plan Description(s) incorporated into this Agreement as Exhibit D. All Program Services shall be provided in accordance with the New York State Civil Service Law and its 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 Subcontractors. 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. All Key Subcontracts shall expressly name the State of New York, through the Department, as the sole intended beneficiary of any such Key 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 such Key Subcontracts with no redactions to the Department before execution for its review and approval.

6.2.0 Account Team

6.2.1 The Contractor must maintain an organization of sufficient size with staff that possesses the necessary skills and experience to administer, manage, and oversee all aspects of the MHSA Program during Program Services operation and transition.

6.2.1a The account team must be comprised of qualified and experienced individuals who are acceptable to the Department and who are responsible for ensuring that the operational, clinical, and financial resources are in place to operate the MHSA Program in an efficient manner.

6.2.1b 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 MHSA

Program requirements and to address any issues that may arise during the performance of the Agreement.

6.2.2 The Contractor's dedicated account team must be experienced, accessible (preferably in the New York State Capital Region district) and sufficiently staffed to:

6.2.2a provide prompt acknowledgement and timely responses (within 1 to 2 Business Days) to administrative and clinical concerns and inquiries posed by the Department, or other staff on behalf of the Council on Employee Health Insurance or union representatives regarding member-specific claims issues for the duration of the Agreement to the satisfaction of the Department; and

6.2.2b immediately notify the Department in writing of actual or anticipated events impacting MHSA Program costs and/or delivery of services to Enrollees, such as but not limited to: legislation, litigation, regulations, class action settlements, and operational issues.

6.2.3 The Contractor's dedicated account team must ensure that the MHSA Program is in compliance with all legislative, statutory and regulatory requirements. If the Contractor is unable to comply with any legislative, statutory or regulatory requirements, the Department must be notified in writing immediately. The Contractor must work with the Department to develop accurate Summary Plan Descriptions (SPDs) and/or MHSA Program material.

6.2.4 The Contractor must work with the Department to develop appropriate customized forms, letters and website content for the MHSA Program, including but not limited to Enrollee claim forms, certification forms and letters, explanation of benefits, appeal letters, etc. All such communications must be approved by the Department prior to their distribution.

6.3.0 Premium Development Services: The Contractor will be responsible for assisting and supporting the Department with all aspects of the premium rate development including, but not limited to:

6.3.1 Providing a team of qualified and experienced individuals who are acceptable to the Department and who will assist and support the Department in developing

premium rates consistent with the financial interests and goals of the MHSA Program and the State;

6.3.2 Developing projected aggregate claim, trend and Administrative Fee amounts for each MHSA Plan Year. Analysis of all MHSA Program components impacting the MHSA Program cost shall be performed including, but not limited to claims, trend factors, Administrative Fees, changes in enrollment and impact of enacted legislation; and

6.3.3 Working with the Department and its contracted actuarial consultant through the annual premium renewal process to further document and explain any premium rate recommendation. This process includes presenting the premium rate recommendation to staff of the Department, Division of the Budget and GOER.

6.4.0 Implementation

6.4.1 No implementation period is contemplated, as Contractor is currently providing the Program Services.

6.5.0 Customer Service

6.5.1 The Contractor will be responsible for all customer support and services including, but not limited to:

6.5.1a Providing Enrollees access to information on all MHSA benefits and services related to the MHSA Program through The Empire Plan consolidated toll-free number twenty-four (24) hours a Day, 365 Days a year;

6.5.1b The Empire Plan consolidated toll-free telephone service is provided through the AT&T voice network services under a contract with the Empire Plan's medical carrier/third party administrator and is available to callers twenty-four (24) hours a Day, 365 Days a year. If the Contractor uses AT&T for voice network services, the Contractor must establish and maintain a transfer connection with AT&T (T-1 line), including a back-up system which will transfer calls to the Contractor's line at their call center service site. The Contractor must sign a shared service agreement with the Empire Plan's medical carrier/third party

administrator (currently UnitedHealthcare) and AT&T. If the Contractor does not use AT&T for voice network services, the medical carrier/third party administrator will generate a bill to the Contractor for calls transferred to the Contractor from the medical carrier/third party administrator. The Contractor acknowledges that required programming and scripting changes to the Empire Plan's consolidated phone lines may take 4 -6 weeks and shall plan accordingly to ensure scripting changes are requested timely. In addition, the Contractor is also required to provide twenty-four (24) hours a Day, 365 Days a year access to a TTY number for callers utilizing a TTY device because of a hearing or speech disability. The TTY number must provide the same level of access to call center service as required by this Section of the Agreement;

6.5.1c Maintaining a Dedicated Call Center for the MHSA Program located in the United States (preferably in New York State) that:

6.5.1c(1) Provides direct access to trained Clinicians who direct members to appropriate Network Providers, provide clinical MHSA information and if requested by the caller, assist in scheduling appointments on behalf of the member twenty-four (24) hours a Day, 365 Days a year;

6.5.1c(2) Provides access to fully trained customer service representatives and supervisors through and including four (4) months after termination of the Agreement, between the hours of 8:00AM to 8:00PM Monday through Friday, except for Business Holidays; and

6.5.1c(3) Meets or exceeds the Contractor's proposed call center telephone guarantees set forth in Section 7.3.0 through 7.6.0 of this Agreement.

6.5.2 Customer service staff must use an integrated system to log and track all Enrollee calls. The system must create a record of the Enrollee contacting the call center, the call type, and all customer service actions and resolutions;

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- 6.5.3** Customer service representatives must be trained and capable of responding to a wide range of questions, complaints and inquiries including but not limited to: Transition of Care; MHSA Program benefits levels; status of certification requests; eligibility and claim status; coordination of benefits; and be able to identify calls requiring transfer to a clinician;
- 6.5.4** Maintaining a designated back up customer service staff located in the United States with MHSA Program specific training to handle any overflow when the Dedicated Call Center is unable to meet the Contractor's proposed customer service performance guarantees. This back up customer service staff would also be utilized in the event the Dedicated Call Center becomes unavailable; and
- 6.5.5** Maintaining and timely updating a secure online Empire Plan - specific, customized website accessible by Enrollees upon execution and approval by the AG and OSC, which is available twenty-four (24) hours a Day, 365 Days a year, except for regularly scheduled maintenance, which will provide, at a minimum access to information regarding: MHSA Program benefits; Network Provider locations; eligibility; Copayment information; certification information; claim status; and clinically-based educational material. The Empire Plan website may not contain any links to the Contractor's standard website used for other customers. The Department shall be notified of all regularly scheduled maintenance at least one (1) Business Day prior to such maintenance being performed. The Contractor must establish a dedicated link to the customized website for the MHSA Program from the Department's website with content subject to the approval of the Department and limited to information that pertains to the MHSA Program. Navigation bringing a viewer back to the Department's website must be provided. No other links are permitted without the written approval of the Department. Access to the online Network Provider locator must be available to Enrollees without requiring them to register on the website and the Provider locator may only contain Provider types that are covered under the Empire Plan but may list all provider specialties. A disclaimer will be included on the website indicating that all provider specialties listed may not be covered under the Empire Plan. Any costs associated with customizing and updating the website or establishing a dedicated link for the MHSA Program shall be borne solely by the Contractor. Also, the Contractor shall fully cooperate with any Department initiatives to use new technologies, processes, and methods to

improve the efficiencies of the customized website including development of an integrated Enrollee portal.

6.6.0 Enrollee Communication Support

6.6.1 All Enrollee communications including the Empire Plan website, developed by the Contractor are subject to the Department's review and prior written approval, including but not limited to any regular standardized direct communication with Enrollees or their MHSA Providers in connection with covered benefits or the processing of Enrollee claims, either through mail, e-mail, fax or telephone. The Department, in its sole discretion, reserves the right to require any change it deems necessary.

6.6.2 The Contractor will be responsible for providing Enrollee communication support and services to the Department including, but not limited to:

6.6.2a Developing language describing the MHSA Program for inclusion in the NYSHIP General Information Book and Empire Plan SPD, subject to the Department's review and approval;

6.6.2b Developing articles for inclusion in Empire Plan Reports and other publications on an "as needed" basis, detailing MHSA Program benefit features and/or highlighting trends in MHSA utilization;

6.6.2c Timely reviewing and commenting on proposed MHSA Program communication material developed by the Department;

6.6.2d Developing timely and accurate Summaries of Benefits Coverage (SBC), which will be consolidated with coverage information from other Program administrators for The Empire Plan, Student Employee Health Plan and Excelsior Plan, printed by the Department and distributed to the Program administrators. The Department will post the SBCs on NYSHIP Online. Upon Enrollee request, the Contractor must direct Enrollees to the NYSHIP Online website to view the SBC or distribute a copy of the SBC to the Enrollee within the federally required time period; and

6.6.2e Paying a portion of the Shared Communication Expenses to The Empire Plan's medical program administrator. The Empire Plan's medical program administrator will bill the Contractor on a quarterly basis for a portion of the Programs' Shared Communication Expenses. The Department agrees that these expenses are not included in Administrative Fees and that the Contractor will be reimbursed for these costs as set forth in Article XIV of the Agreement.

6.6.3 Upon request, subject to the approval of the Department, on an "as needed" basis, the Contractor agrees to provide staff to attend Health Benefit Fairs, select conferences, and benefit design information sessions in NYS and elsewhere in the United States. Additionally, upon the request of the Department, the Contractor agrees to provide, Employee Assistance Program training sessions in NYS and elsewhere in the United States. The Contractor agrees that the costs associated with these services are included in the Contractor's Administrative Fee.

6.6.4 The Contractor must work with the Department to develop appropriate customized forms and letters for the MHSA Programs, including but not limited to Enrollee claim forms, certification forms and letters, explanation of benefits and appeal letters. All such communications must be approved by the Department, in writing, prior to distribution.

6.7.0 Enrollment Management: The Contractor will be responsible for maintaining accurate, complete, and up-to-date enrollment files, located in the United States, based on information provided by the Department. These enrollment files shall be used by the Contractor to process claims, provide customer service, identify individuals in the enrollment file for whom Medicare is primary, and produce management reports and data files. The Contractor must provide enrollment management services including but not limited to:

6.7.1 Providing an enrollment system capable of receiving secure enrollment transactions (Monday through Friday) and having all transactions fully loaded to the claims processing system and clinical management system within twenty-four (24) hours of release of a retrievable file by the Department. The Department will release enrollment changes to the Contractor in an electronic format daily (Monday through Friday). On

occasion, the Department will release more than one enrollment file within a twenty-four (24) hour period. The Contractor must be capable of loading both files within the twenty-four (24) hour performance standard. The format of these transactions will be in an EDI Benefit Enrollment and Maintenance transaction set, utilizing an ANSI x.12 834 transaction set in the format specified by the Department. The latest transaction format is contained in Exhibit II.H. The Contractor shall, on a daily basis, review and manually load transactions which do not process correctly from the daily enrollment file by reviewing the correct enrollment data maintained in the NYBEAS. The Contractor shall immediately notify the Department of any delay in loading enrollment transactions. In the event the Contractor experiences a delay due to the quality of the data supplied by the Department, the Contractor shall immediately load all records received (that meet the quality standards for loading) within twenty-four (24) hours of their release, as required. The Contractor must also have the capability to receive alternate identification numbers and any special update files from the Department containing eligibility additions and deletions, including emergency updates, if required;

6.7.2 Ensuring the security of all enrollment information as well as the security of a HIPAA - compliant computer system in order to protect the confidentiality of Enrollee data contained in the enrollment file. Any transfers of enrollment data within the Contractor's system or to external parties must be completed via a secured process;

6.7.3 Providing a back-up system or have a process in place where, if enrollment information is unavailable, Enrollees can obtain Clinical Referral Line services without interruption;

6.7.4 Cooperating fully with any State initiatives to use new technologies, processes, and methods to improve the efficiencies of maintaining enrollment data including any enrollment file conformance testing requested during the course of the Agreement;

6.7.5 Maintaining a read-only connection to the NYBEAS enrollment system for the purpose of providing the Contractor's staff with access to current MHSA Program enrollment information through NYBEAS, Monday

through Friday, from 8:00 am to 5:00 pm, with the exception of Business Holidays as indicated on the Department's website; and

6.7.6 Meeting the administrative requirements for National Medical Support Notices. A child covered by a Qualified Medical Child Support Order (QMCSO), or the child's custodial parent, legal guardian, or the provider of services to the child, or a NYS agency to the extent assigned the child's rights, may file claims and the Contractor must make payment for covered benefits or reimbursement directly to such party. The Contractor will be required to store this information in its system(s) so that any claim payments or any other plan communication distributed by the Contractor, including access to information on the Contractor's website would go to such party designated in the QMCSO.

6.8.0 Reporting: The Contractor is responsible for accurate reporting services including, but not limited to:

6.8.1 Ensuring that all financial reports including claim reports are generated from amounts billed to the MHSA Program, and reconcile to amounts reported in the quarterly and annual financial experience reports;

6.8.2 Developing, in conjunction with the Department, standard electronic management, financial, and utilization reports required by the Department for its use in the review, management, monitoring and analysis of the MHSA Program. These reports must tie to the amounts billed to the MHSA Program. The final format of reports is subject to the Department review and approval;

6.8.3 Supplying reports in paper format and/or in an electronic format including but not limited to Microsoft, Access, Excel and/or Word as determined by the Department. The reports include, but are not limited to, reports and data files listed in Article XV "Reports and Claim Files" of this Agreement;

6.8.4 Providing ad hoc reports and other data analysis at no additional cost. The exact format, frequency, and due dates for such reports shall be specified by the Department. Information required in the Ad Hoc Reports may include but is not limited to providing:

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- 6.8.4a** Forecasting and trend analysis data
 - 6.8.4b** Utilization data
 - 6.8.4c** Utilization review savings
 - 6.8.4d** Benefit design modeling analysis
 - 6.8.4e** Reports to meet clinical program review needs
 - 6.8.4f** Reports segregating claims experience for specific populations
 - 6.8.4g** Reports to monitor Agreement compliance; and

6.8.5 Providing direct, secure access to the Contractor's claims system and any online and web based reporting tools to authorized Department representatives who execute Contractor's Guest User Authorization form.

6.9.0 Consulting: The Contractor will be responsible for providing advice and recommendations regarding the MHSA Program. Such responsibility shall include, but not be limited to:

6.9.1 Informing the Department in a timely manner concerning such matters as cost containment strategies, technological improvements, Provider best practices and State/Federal legislation (e.g., State/Federal parity legislation, etc.) that may affect the MHSA Program. The Contractor must also make available to the Department one or more members of the clinical and account management team to discuss the implications of new trends and developments. The Department is not under any obligation to act on such advice or recommendation; and

6.9.2 Assisting the Department with recommendations and evaluation of proposed benefit design changes and implement any changes necessary to accommodate MHSA Program modifications resulting from collective bargaining, legislation, or within the statutory discretion of the State. Recommendations must include a preliminary analysis of all associated costs, a clinical evaluation, and the anticipated impact of proposed MHSA Program modifications and contemplated benefit design changes on Enrollees. In the event of a design change and should the Contractor requests any change in compensation, any such change will be processed in accordance with Article VIII, Modification of Program Services.

6.10.0 Network Management

6.10.1 Provider Network

6.10.1a The Contractor must maintain a credentialed and contracted MHSA Provider Network that meets or exceeds the Contractor's proposed access standards, set forth in Section 7.10.1 of the Agreement throughout the term of the Agreement.

6.10.1b The MHSA Program requires that the Contractor have available to Enrollees its MHSA Provider Network in accordance with the requirements set forth in Sections 6.4.0 and 7.2.1 guaranteeing effective implementation of their proposed Provider Network.

6.10.1c The Contractor shall offer participation in its MHSA Provider Network to any Provider who meets the Contractor's credentialing criteria, if the Provider is a high volume provider, or upon the Department's request where such inclusion is deemed necessary by the Department to meet the needs of Enrollees even if not otherwise necessary to meet the minimum access guarantees.

6.10.1d In developing its proposed MHSA Provider Network, the Contractor is expected to use its best efforts to substantially maintain the composition of Network Providers included in the MHSA Program's current Provider Network. The Contractor's proposed MHSA Provider Network must be composed of an appropriate mix of licensed and/or certified psychiatrists, and psychologists, Masters Level Clinicians (MLC), Licensed Clinical Social Worker (in NYS CSWs must qualify for the "R" designation issued by the State Education Department; elsewhere, they must have the highest licensure offered in the state for a CSW), Registered Nurse Clinical Specialists, psychiatric nurse/clinical specialists and registered nurse practitioners, Certified Behavioral Analysts, Structured Outpatient Programs and Partial Hospitalization Programs including: residential treatment centers, group homes, hospitals and alternative treatment programs such as day/night centers, half-way houses and treatment programs for dually diagnosed individuals (e.g., mental health diagnosis

and substance abuse diagnosis). Programs certified by the NYS Office of Alcoholism and Substance Abuse Services (OASAS) must be included in the MHSA Provider Network. The MHSA Provider Network must include Providers throughout New York State and in areas with high concentrations of active and/or retired employees living outside of New York State such that the network access guarantees established by the terms of the Agreement are fully satisfied.

6.10.2 Provider Credentialing

- 6.10.2a** The Contractor must assure its MHSA Provider Network is credentialed in accordance with all applicable federal and state laws, rules and regulations.
- 6.10.2b** The Contractor must establish credentialing criteria for Network Practitioners and Facilities, including Alternative Levels of Care (ALOC), for the purpose of ensuring quality of the MHSA Provider Network, including, but not limited to, years of experience, level of education/certification, licensure, quality of care, practice patterns, malpractice insurance coverage, hours of operation and availability of appointments.
- 6.10.2c** The Contractor must credential MHSA Network Providers in a timely manner that meets the credentialing performance guarantee set forth in Section 7.11.0 of this Agreement and shall have an effective process by which to confirm MHSA Network Providers continuing compliance with credentialing standards.
- 6.10.2d** The Contractor must maintain a strong Provider Relations staff presence within New York State.
- 6.10.2e** The Contractor must maintain credentialing records and make them available for review by the Department upon request.

6.10.3 Provider Contracting

- 6.10.3a** The Contractor will be responsible for providing Provider

contracting services including but not limited to:

- 6.10.3a(1)** Negotiating pricing arrangements that utilize the MHSA Program's size to optimize the Provider fee schedule;
- 6.10.3a(2)** Ensuring that all MHSA Network Providers abide by and comply with all of the MHSA Program's requirements and benefit design specifications;
- 6.10.3a(3)** Ensuring that MHSA Network Providers accept as payment-in-full, the Contractor's contractual reimbursement for all claims for Covered Services, subject to the applicable MHSA Program Copayments;
- 6.10.3a(4)** Notifying the Department in writing within one (1) Business Day of any substantial change to the number, composition or terms of the Network Provider contracts utilized by the MHSA Program;
- 6.10.3a(5)** Notifying impacted Enrollees and the Department of any potential or actual Network Provider terminations that impact a significant number of Enrollees;
- 6.10.3a(6)** Negotiating Single Case Agreements with Non-Network Providers on a case-by-case basis when the Contractor determines that it is clinically appropriate or to address guaranteed access issues;
- 6.10.3a(7)** Negotiating agreements on a case-by-case basis, with prior written approval from the Department, with Licensed Marriage and Family Therapists (LMFTs), Licensed Mental Health Counselors (LMHCs) and other mental health practitioners licensed under Article 163 of the New York Education Law when such provider possesses a particular subspecialty that is clinically appropriate or to address access issues; and

6.10.3a(8) Establishing a tiered MHSA Provider Network and incentives including but not limited to financial, administrative and continuing professional education to enhance Provider performance and clinical outcomes.

6.10.4 Provider Audit and Quality Assurance: The Contractor must have a staffed and trained audit unit employing a comprehensive Provider audit program that includes but is not limited to:

6.10.4a(1) Conducting routine and targeted on-site audits of Network Providers. Providers that deviate significantly from normal patterns in terms of cost, CPT coding or utilization are to be identified and targeted for on-site and desk audits in accordance with established selection and screening criteria. On-site audits must also be conducted upon request by the Department and/or OSC, or when information is received by the Contractor that indicates a pattern of conduct by a Provider that is not consistent with the MHSA Program's design and objectives. Any modifications to the proposed audit program must receive prior written approval from the State;

6.10.4a(2) Providing reports to the Department detailing audits planned, audits initiated, audits in progress, audits completed, audit findings, audit recoveries, and any other enforcement action by the Contractor. The Contractor must inform the Department in writing of any allegation or other indication of potential fraud and abuse identified within seven (7) Business Days of receipt of such allegations or identification of such potential fraud and/or abuse. The Department must be fully informed of all fraud and/or abuse investigations impacting the MHSA Program upon commencement, regardless of whether the individual fraud and/or abuse investigation has a material financial impact to the State;

6.10.4a(3) Maintaining the capability and contractual right to effectively audit the MHSA Program's Provider Network, including the

use of statistical sampling audit techniques and the extrapolation of errors;

6.10.4a(4) Remitting 100% of Provider and Enrollee audit recoveries to the Department as applicable within thirty (30) Days of receipt consistent with the process specified in Section XIV, "Payments/ (Credits) to/from the Contractor" of this Agreement;

6.10.4a(5) Utilizing the auditing tools and performance measures proposed by the Contractor to identify fraud and abuse by Network Providers and/or Enrollees.

6.10.4b The Contractor must conduct a comprehensive quality assurance program which includes, but is not limited to:

6.10. 4b(1) Monitoring the quality of care provided by Network Providers;

6.10.4b(2) Monitoring technical competency and customer service skills of Network Provider staff;

6.10.4b(3) Network Provider profiling;

6.10.4b(4) Peer review procedures;

6.10.4b(5) Outcome and Quality Measurement analysis; and

6.10.4b(6) Maintaining an ongoing training and education program..

6.10.5 Value Based Initiatives

6.10.5a The Contractor must establish a tiered MHSA Provider Network and/or incentives including but not limited to financial, administrative and continuing professional education to promote value-based MHSA Services and enhance Provider performance and clinical outcomes which is compliant with NYS and Federal parity laws.

6.11.0 Claims Processing

6.11.1 The Contractor must provide all aspects of claims processing. Such responsibility shall include but not be limited to:

6.11.1a Maintaining a claims processing center located in the United States staffed by fully trained claims processors and supervisors that meets the performance standard set forth in Sections 7.12.0 and 7.13.0 of this Agreement;

6.11.1b Verifying that the MHSA Program's benefit design has been loaded into the system appropriately to adjudicate and calculate cost sharing and other edits correctly;

6.11.1c Accurate and timely processing of all claims submitted under the MHSA Program in accordance with all applicable laws as well as the benefit design applicable to the Enrollee including Copayment, Deductible, Coinsurance, coordination of benefits, Annual Maximums and Coinsurance Maximums, at the time the claim was incurred, as specified to the Contractor by the Department;

6.11.1d Paying claims when there is no Coordination of Benefit information on file and request updated COB Information via Explanation of Benefits message; mailing an annual COB letter to Enrollees, prompting customer service representatives every 7 months to request COB updates from Enrollees when they call Customer Service.

6.11.1e Developing and maintaining claim payment procedures, guidelines, and system edits that guarantee accuracy of claim payments for covered expenses only, utilizing all edits as proposed by the Contractor and approved in writing by the Department; The Contractor's system must ensure that payments are made only for authorized services.

6.11.1f Maintaining claims histories for twenty-four (24) months online and archiving older claim histories for the balance of the calendar year in which they were made and for six

(6) additional years thereafter, per Appendix A, with procedures to easily retrieve and load claim records;

6.11.1g Maintaining the security of the claim files and ensuring HIPAA compliance;

6.11.1h Adjusting all attributes of claim records processed in error, crediting the MHSA Program for the amount of the claim processed in error;

6.11.1i Agreeing that all claims data is the property of the State. Upon the written request of the Department, the Contractor shall share claims data with the Department's actuarial consultant, other Empire Plan carriers for various programs (e.g. Disease Management, Centers of Excellence) and the Department's Decision Support System vendor at no additional cost. The Contractor cannot share, sell, release, or make the data available to third parties in any manner without the prior written consent of the Department;

6.11.1j Maintaining a back-up system and disaster recovery system for processing claims in the event that the primary claims payment system fails or is not accessible;

6.11.1k Maintaining a claims processing system capable of integrating and enforcing the various clinical management and utilization review components of the MHSA Program; including certification, authorization, concurrent review and benefit maximums.

6.11.1l Developing and securely routing a MHSA daily accumulator file that reports claims incurred to date which have been applied to the shared -Accumulators between The Empire Plan Hospital Program, Medical Program and MHSA Program;

6.11.1m Loading one or more daily accumulator files from The Mental Health & Substance Abuse Program

Empire Plan medical carrier/third party administrator
and hospital carrier that reports Shared Accumulators;

6.11.1n Participating in Medicare Crossover by entering into an agreement with The Empire Plan medical carrier/third party administrator to accept electronic claims data record files for Empire Plan Enrollees who have Medicare as their primary coverage. Claims data will only be sent to the Contractor for possible Empire Plan mental health and substance abuse claims which also involve Medicare coverage. The claims information will include claims filed with the Center for Medicare and Medicaid Services (CMS) that should be considered by the Contractor for secondary coverage. The Empire Plan medical carrier/third party administrator will sort out any claims for benefits that are for mental health or substance abuse services and electronically forward the claims to the Contractor for processing. The Contractor will be financially responsible for charges incurred for crossing over each Part B MHSA Program claim from the medical program to the MHSA Program.

6.11.1o Pursuing collection of up-to-date (at a minimum, annually) coordination of benefit information that is integrated into the claims processing system through a pay and pursue methodology and pursuing recovery of any money due the MHSA Program from other payers or Enrollees who have primary MHSA coverage through another carrier;

6.11.1p Analyzing and monitoring claim submissions to promptly identify errors, fraud and/or abuse and reporting to the State such information in a timely fashion in accordance with a State approved process. The Contractor will credit the MHSA Program the amount of any overpayment regardless of whether any overpayments are recovered from the Provider and/or Enrollee in

instances where a claim is paid in error due to Contractor error, without administrative charge to the MHSA Program. The Contractor shall report fraud and abuse to the appropriate authorities. In cases of overpayments resulting from errors only found to be the responsibility of the State, or due to fraud and abuse the Contractor shall use reasonable efforts to recover any overpayments and credit 100% of any recoveries to the MHSA Programs upon receipt; however, the Contractor is not responsible to credit amounts that are not recovered;

6.11.1q Establishing a process through which Providers can verify eligibility of Enrollees and Dependents through the Provider portal or from the Contractor's call center during Call Center Hours;

6.11.1r Processing claims pursuant to Enrollees covered under the Disabled Lives Benefit. The Department agrees to reimburse the Contractor for claims processed under the Disabled Lives Benefit in accordance with Article XIV, Payments/(Credits) to/from the Contractor of this Agreement;

6.11.1s Processing claims in compliance with an agreed upon mixed services Protocol for covered services that include both medical and mental health and substance abuse components;

6.11.1t Updating the claims adjudication system with FAIR Health, Inc.'s database of Reasonable and Customary amounts at the 90th percentile, a minimum of twice a year;

6.11.1u Mailing Explanation of Benefits to Enrollees for all Non-Network claims and any other Network claims for which the Enrollee Cost Share is in excess of the applicable

Copayment for the MHSA service. Explanation of Benefits for all MHSA services must be mailed to the Enrollee, upon request, from the Contractor's Dedicated Call Center and available for download by registered users of the Contractor's customized website. Within thirty (30) days of the end of each Plan Year, an annual Explanation of Benefits statement must be mailed to all Enrollees who have submitted claims.;

6.11.1v Following the guidelines for escheatment as outlined on the NYS Office of the State Comptroller's website at: www.osc.state.ny.us/agencies/guide/MyWebHelp/Content/XIV/1.htm;

6.11.1w Receiving claims data from The Empire Plan's Prescription Drug contractor to assist in identifying members who are taking prescription drugs for depression;

6.11.1x Performing medical necessity review on MHSA Program secondary claims that were denied as a non-covered service by the primary insurer .The Contractor will not perform medical necessity review on MHSA Program secondary claims if the primary insurer paid the claim;

6.11.1y Paying non-network MHSA Program claims at billed charges when the FAIRHealth database or Medicare allowance does not contain a rate for a CPT code.

6.12.0 Clinical Management

6.12.1 Certification of Care

To ensure that the resources available to the MHSA Program are utilized for appropriate, medically necessary care, the Contractor is required to perform certification of care which includes, at a minimum:

6.12.1a Use of a voluntary Clinical Referral Line (CRL) located in United States to evaluate Enrollees' MHSA care needs and direct Enrollees to the most appropriate, cost-effective Providers and levels of care. The CRL must be structured to facilitate the Clinician's assessment of the caller's MHSA treatment needs and to provide suitable, timely referrals especially in emergency or urgent situations or for care that requires inpatient admission;

6.12.1b Use of alternate procedures to certify care when the Enrollee fails to call the CRL, as follows:

6.12.1b(1) The Contractor is ultimately responsible for ensuring that the Enrollee receives the Network level of benefits and obtaining all necessary authorizations for treatments for Network outpatient services (as required), for "concurrent therapy visits" identified for medical necessity review and Network inpatient care, when an Enrollee contacts a Network Provider directly for treatment without calling the CRL;

6.12.1b(2) When an Enrollee contacts a Network Provider directly and the Network Provider is not the appropriate Provider to treat that Enrollee, the Contractor is responsible for ensuring that its Network Providers take responsibility for assisting the member in obtaining an appropriate referral;

6.12.1b(3) When an Enrollee contacts a Non-Network Facility directly for treatment and the Contractor is notified in advance of the admission, the Contractor must provide the Enrollee or other HIPAA-authorized representative of the Enrollee, with a written determination of medical necessity of care in advance of the inpatient admission, where feasible;

6.12.1c Timely written notification to the Enrollee, or other HIPAA - authorized representative of the Enrollee, of the potential financial consequences of remaining in a Non-Network Facility when the initial determination of medical necessity occurs;

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- 6.12.1d** Preparing and sending communications to notify Enrollees and/or their Providers of the outcome of their certification or authorization request;
 - 6.12.1e** Promptly loading into the clinical management and/or claims processing system approved authorizations determined by the Contractor; and
 - 6.12.1f** Certifying inpatient hospital admissions for alcohol detox, advising the facility to send the claim to the Hospital Program carrier/third party administrator and managing the Enrollee's care if transferred to rehab.

6.12.2 Concurrent Review

To safeguard Enrollee health and ensure adherence with the MHSA Program's benefit design and requirements on mental health parity, the Contractor must administer a concurrent utilization review program in the United States which:

- 6.12.2a** Enforces the MHSA Program's benefit design features and ensures that Network Providers use the latest MHSA care protocols for Enrollees;
- 6.12.2b** Uses Clinicians to review Provider treatment plans which must detail, at a minimum: past clinical and treatment history; current symptoms; functional impairment; and DSM-IV diagnosis. The Contractor must require that the Network Provider's proposed treatment plan and goals be in writing for outpatient services. The Contractor must review the Network Provider's treatment plan to determine medical necessity of continuing treatment when the Enrollee is not progressing towards the treatment goals as expected for the Enrollee's clinical diagnosis;
- 6.12.2c** Is conducted in a manner which is parity compliant as required by State and Federal law;

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- 6.12.2d** Is performed by the Contractor for outpatient and inpatient care rendered by Non-Network Providers when requested by the Enrollee or Non-Network Provider in addition to the required concurrent review set forth in Section 6.12.2b;
 - 6.12.2e** For inpatient admissions, recognizes when to utilize more appropriate and less restrictive levels of care, when medically appropriate. The Contractor must have procedures for identifying when transfer to an alternate inpatient or outpatient setting is appropriate and for arranging such transfers;
 - 6.12.2f** Establishes maximum time frames for inpatient review based upon diagnosis treatment plan and the level of care provided, that allows for discharge planning when continued stay is not certified;
 - 6.12.2g** Employs appropriately skilled Clinicians to review treatment plans in a manner that does not disrupt or delay treatment;
 - 6.12.2h** Renders written certification decisions to the Enrollee and Provider in a timely manner and requires that if continuing care will not be certified, the decisions will be rendered by a Peer Advisor;
 - 6.12.2i** For Enrollees admitted to Non-Network Facilities (other than those Enrollees who voluntarily choose a Non-Network Facility), the Contractor must have procedures to either arrange to transfer the Enrollee to a Network Facility as soon as medically appropriate or manage the care as if it was a Network Facility, including negotiating discounts with the facility;
 - 6.12.2a.(10)** Performs appropriate discharge planning by identifying when discharge from an inpatient network setting is appropriate and by directing the Enrollee to appropriate

Alternate Level of Care or outpatient network care following discharge, including scheduling the initial appointment. Discharge planning must include review of an Enrollee's progress with aftercare treatment as follows:

6.12.2a(10)i Clinical Managers must obtain and review information that includes at a minimum: the name and contact for the follow-up Provider; date and time of initial follow-up appointment; and the names of responsible family members; and

6.12.2a(10)ii Clinical Managers must assist Providers in locating aftercare services. The Contractor must maintain a database of local community resources to assist Providers in locating aftercare services or alternative care in their areas.

6.12.2a(11) The Contractor must provide case management on a voluntary basis for complex cases or cases requiring long-term treatment. The Contractor must cooperate with The Empire Plan hospital carrier and other Empire Plan carriers in cases of medical/mental health multiple diagnoses in accordance with the Mixed Services Protocol guidelines established by the Department, set forth as Exhibit F to this Agreement. Under those guidelines, in cases where there is both a medical and a psychiatric diagnosis, responsibility for case management and claims payment is determined by the hospital unit (medical or psychiatric) to which the admission is made and the specialty of the attending physician. When those guidelines are insufficient to determine case management responsibility, the Empire Plan hospital carrier and the Contractor must come to an agreement using other factors such as the condition

causing the person to remain hospitalized and the proposed treatment plan;

6.12.2a(12) The Contractor must use Clinical Managers and/or Peer Advisors to manage the care of members; and

6.12.2a(13) The Contractor must measure and assess the effects of clinical management and utilization review processes and procedures on the quality of care and MHSA Program costs.

6.12.3 Disabled Dependent Determinations

6.12.3a The Contractor must establish a process to perform reviews of the PS-451 form and all additional medical information for mental health and substance abuse-related dependent disabilities. The review must be completed in the United States and a clinical determination must be completed within 10 Business Days of receipt of a complete form.

6.12.3b The Contractor must send a determination letter, approved in advance by MHSA Program, to the Enrollee and to the Department advising of the determination within three (3) Business Days of the determination.

6.12.4 Appeal Process

The Contractor must:

6.12.4a Perform administrative (non-clinical) appeals in a timely manner by an employee of the Contractor with problem-solving authority above that of the original reviewer;

6.12.4b Administer an expeditious, PPACA, and State and Federal parity compliant internal clinical appeal process in compliance with HIPAA which allows Providers and/or Enrollees to appeal denied coverage on the basis of medical necessity or an experimental or investigational treatment, including:

6.12.4b(1) Developing a clinical appeal process and criteria for establishing medical necessity and experimental or investigational treatment;

6.12.4b(2) Reviewing clinical appeals for medical necessity and experimental or investigational treatment and preparing communications to notify the Providers and Enrollee of the outcome of appeals; and

6.12.4b(3) Integrating the appeal decisions into the clinical management and claims processing systems.

6.12.4c Establish two levels of internal clinical appeals, as follows:

6.12.4c(1) A level 1 clinical appeal must be performed by a Peer Advisor;

6.12.4c(2) A level 2 clinical appeal must be conducted by a panel of two board-certified psychiatrists and a Clinical Manager who work for the Contractor. Panel members must not have been involved in the previous determinations of the case;

6.12.4c(3) Clinical Appeals must be completed in a timely manner consistent with NYS and federal laws:

6.12.4c(3)a Expedited first level inpatient concurrent appeals for substance abuse treatment must be completed within 24 hours;

6.12.4c(3)b Expedited first level appeals for all other levels of care that are prospective/concurrent, must be completed within the lesser of 72 hours from receipt of the appeal

or 2 Business Days from receipt of all necessary information;

6.12.4c(3)c Standard first level appeals that are prospective must be completed within 15 days;

6.12.4c(3)d First level appeals for all retrospective appeals for all levels of care, must be completed within 30 Days;

6.12.4c(3)e Second level clinical appeals of a post-service claim, must be completed within thirty (30) days of the member's request; and

6.12.4c(3)f Second level clinical appeals of a pre-service request for benefits, must be completed within fifteen (15) days of the member's request.

6.12.4d Oversee and enforce the MHSA Program's appeal processes including reporting the results of the administrative, clinical and external appeal processes for the MHSA Program to the Department in the format and frequency required in Article XV: Reports and Claim Files of this Agreement; and

6.12.4e Respond to and pay for all External Appeals on behalf of the Department as requested by the New York State Department of Financial Service through a process that provides an opportunity for Enrollees and Dependents to appeal when denied coverage on the basis that a service is not medically necessary or is an experimental or investigational service.

6.12.5 Other Clinical Management Programs

6.12.5a The Contractor must provide voluntary opt-in programs for Depression Management, Eating Disorders and Attention Deficit Hyperactivity Disorder (ADHD). [REDACTED]

[REDACTED] The programs must include:

- 6.12.5a(1)** Methods to identify members with depression, eating disorders and ADHD using screening tools, both on-line and by mail;
- 6.12.5a(2)** Methods to educate members about the symptoms, effects and treatment of depression, eating disorders and ADHD;
- 6.12.5a(3)** Accepting referrals to Network Providers;
- 6.12.5a(4)** Telephonic support, coordination with treating providers and referrals to community services; and
- 6.12.5a(5)** Methods to establish contact with Empire Plan primary care physicians, and other medical specialists likely to have patients that present with symptoms of depression, eating disorders or ADHD in order to educate them about the availability of the depression, eating disorder and ADHD programs.

6.12.5b The Contractor may propose other voluntary opt-in programs which are available at [REDACTED], including Autism Care Management Program, Outpatient Detoxification (Buprenorphine), Adolescent Screening Program, Post-Partum Depression Screening Program, Resilience Initiative and Stamp Out Stigma. The Department will provide written notice to the Contractor of its decision to opt in to any of these voluntary programs. The Department reserves the right to not participate in any program offered and the right to opt out of any program at any time.

ARTICLE VII: PERFORMANCE GUARANTEES

7.1.0 The Parties agree to the following guarantees and the corresponding credit amounts for failure to meet the Contractor Performance Guarantees. The Contractor acknowledges and agrees that failure to perform the Program Services features in such a manner which either meets or exceeds any or all of the Contractor Performance Guarantee(s) as set forth in this Article VII, and/or fails to make 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 are cumulative. Amounts due from the Contractor to the Department for failure to perform and audit credit amounts, as determined pursuant to Article XIV of this Agreement, shall be made in such amounts as determined by the Department to be final. Upon such determination, the Department shall notify the Contractor, in writing, and the Contractor shall apply such amounts as a credit against the Administrative Fee in accordance with Article XIV of this Agreement within thirty (30) Days of receiving such notification by the Department. These amounts must also be applied as a credit against the Administrative Fee and reported in the Annual Financial Report.

7.2.0 Implementation and Start-up Guarantee and Credit Amount:

7.2.1 *Guarantee:* The Contractor must guarantee that the Contractor can assume full operational responsibility for the MHSA Program. For the purpose of this guarantee, the Contractor must, on this date, have in place and operational;

7.2.1a A contracted Provider network that meets the access standards set forth in Section 6.10.1 of this Agreement;

7.2.1b A fully operational Dedicated Call Center, including a Clinical Referral Line, providing all aspects of customer support and clinical services as set forth in Section 6.5.0 of this Agreement.

7.2.1c A claims processing system that processes claims in accordance with the MHSA Program's plan design and benefits, as set forth in Section 6.11.0 of this Agreement;

7.2.1d A claims processing system with real time access to the most updated, accurate enrollment and eligibility data provided by the Department to

correctly pay claims for eligible Enrollees consistent with MHSA Program benefit design and contractual obligations; and

7.2.1e A fully functioning customized MHSA Program website with a secure dedicated link from the Department's website able to provide Enrollees with on-line access to the specific website requirements as set forth in Section 6.5.5 of this Agreement

7.2.2 Credit Amount: The Contractor's quoted percent to be credited for each day that all Implementation and Start-up requirements are not met is [REDACTED] of the [REDACTED] (prorated on a daily basis).

7.3.0 Call Center Availability Guarantee and Credit Amount

7.3.1 Guarantee: The MHSA Program's service level standard requires that the Contractor's telephone line will be operational and available to Enrollees, Dependents and providers at least [REDACTED] of the Contractor's Call Center Hours. The call center availability shall be reported monthly and calculated annually.

7.3.2 Credit Amount: The Contractor's quoted amount to be credited against the Administrative Fee for each [REDACTED] below the standard of [REDACTED] [REDACTED]) that the Contractor's telephone line is not operational and available to Enrollees, Dependents and Providers during the Contractor's Call Center Hours calculated on an annual basis is [REDACTED] per year.

7.4.0 Call Center Telephone Response Time Guarantee and Credit Amount

7.4.1 Guarantee: The MHSA Program's service level standard requires that, at least, [REDACTED] of the incoming calls to the Contractor's telephone line will be answered by a customer service representative within [REDACTED]. Response time is defined as the time it takes incoming calls to the Contractor's telephone line to be answered by a customer service representative or a Clinical Manager, if after hours. The call center telephone response time shall be reported monthly and calculated annually.

7.4.2 Credit Amount: The Contractor's quoted amount to be credited against the Administrative Fee for each [REDACTED] of incoming calls to the Contractor's telephone line below the standard of ninety-one percent ([REDACTED]) that is not answered by a customer service or Clinical Referral Line representative within [REDACTED], calculated on an annual basis, is [REDACTED].

7.5.0 Telephone Abandonment Rate Guarantee and Credit Amount

7.5.1 Guarantee: The MHSA Program's service level standard requires that the percentage of incoming calls to the Contractor's telephone line in which the caller disconnects prior to the call being answered by a customer service representative or Clinical Manager, if after hours, will not exceed [REDACTED]. The telephone abandonment rate shall be reported monthly and calculated annually.

7.5.2 Credit Amount: The Contractor's quoted amount to be credited against the Administrative Fee for each [REDACTED] of incoming calls to the Contractor's telephone line in which the caller disconnects prior to the call being answered by a customer service or Clinical Referral Line representative in excess of the standard of [REDACTED] calculated on an annual basis, is [REDACTED] per year.

7.6.0 Telephone Blockage Rate Guarantee and Credit Amount:

7.6.1 Guarantee: The MHSA Program's service level standard requires that the Contractor guarantee that not more than [REDACTED] of incoming calls to the customer service telephone line be blocked by a busy signal. The telephone blockage rate shall be reported monthly and calculated annually.

7.6.2 Credit Amount: The Contractor's quoted amount to be credited against the Administrative Fee for each [REDACTED] of incoming calls to the Contractor's telephone line that is blocked by a busy signal, in excess of the standard of [REDACTED] calculated on an annual basis is [REDACTED] per year.

7.7.0 Enrollment Management Guarantee and Credit Amount

7.7.1 Guarantee: The MHSA Program's service level standard requires that [REDACTED] of all MHSA Program enrollment records that meet the

quality standards for loading will be loaded into the Contractor's enrollment system within [REDACTED] of release by the Department.

7.7.2 Credit Amount: The Contractor's quoted amount to be credited against the Administrative Fee for each [REDACTED] period beyond [REDACTED] [REDACTED] from the release by the Department that [REDACTED] of the MHSA Program enrollment records that meet the quality standards for loading is not loaded into the Contractor's enrollment system is [REDACTED]

7.8.0 Management Reports and Claim File Guarantee and Credit Amount

7.8.1 Guarantee: The MHSA Program's service level standard requires that accurate management reports and claim files as specified in Section 15.1.0 through 15.3.3 of this Agreement will be delivered to the Department and Decision Support Vendor, as applicable, no later than their respective due dates.

7.8.2 Credit Amount: The Contractor's quoted amount to be credited against the MHSA Program's Administrative Fee for each management report or claim file that is not received by its respective due date, is [REDACTED] for each Business Day between the due date and the date the accurate management report or claims file is received by the Department inclusive of the date of receipt.

7.9.0 Network Composition Guarantee and Credit Amount

7.9.1 Guarantee: The MHSA Program's service level standard requires that throughout the five-year term of the Agreement and optional eleven (11) month extension period, if exercised at the sole discretion of the Department, that at [REDACTED] of the Providers in each of the Facility or Practitioner Licensure type categories (Mental Health Facility, Substance Abuse Facility, Mental Health and Substance Facility, Mental Health Outpatient Clinic Group, Substance Abuse Outpatient Clinic Group, Psychiatrist, Psychologist, Licensed Clinical Social Worker who qualifies for the "R" designation in NYS or in other states, a Clinical Social Worker with highest licensure, Certified Behavioral Analyst Provider, Applied Behavioral Analysis Agency, Masters Level Clinician and Mental Health/Substance Abuse Practitioner-Other Prescriber), listed on Exhibit I.Y.2 (RFP) will be maintained. Providers who are retired, deceased or no

longer actively practicing will be excluded from the annual calculation and guarantee. This standard shall be reported quarterly and calculated annually.

7.9.2 Credit Amount: The Contractor's quoted amount to be credited against the Administrative Fee for each [REDACTED] to [REDACTED]% below the standard of [REDACTED] ([REDACTED]) of the Providers in each Facility or Practitioner Licensure type categories (Mental Health Facility, Substance Abuse Facility, Mental Health and Substance Abuse Facility, Mental Health Outpatient Clinic Group, Substance Abuse Outpatient Clinic Group, Psychiatrist, Psychologist, Licensed Clinical Social Worker who qualifies for the "R" designation in NYS or in other states, a Clinical Social Workers with highest licensure, Certified Behavioral Analysts Provider, Applied Behavioral Analysis Agency, Masters Level Clinician and Mental Health/Substance Abuse Practitioner-Other Prescriber), listed on Exhibit I.Y.2 (RFP) as calculated on an annual basis is [REDACTED].

7.10.0 Network Provider Access Guarantee and Credit Amount:

7.10.1 Guarantee: The Contractor guarantees that throughout the term of the Agreement:

7.10.1a [REDACTED] ([REDACTED]) of Enrollees in urban areas will have at least one (1) Network Facility [REDACTED]

7.10.1b [REDACTED] of Enrollees in suburban areas will have at least one (1) Network Facility [REDACTED]

7.10.1c [REDACTED] of Enrollees in rural areas will have at least one (1) Network Facility [REDACTED]

7.10.1d [REDACTED] of Enrollees in urban areas will have at least one (1) Network Practitioner [REDACTED];

7.10.1e [REDACTED] of Enrollees in suburban areas will have at least one (1) Network Practitioner [REDACTED]; and,

7.10.1f [REDACTED] of Enrollees in rural areas will have at least one (1) Network Practitioner within [REDACTED]

7.10.1g In 2016 there will be a minimum of [REDACTED] Certified Behavioral Analysts and Applied Behavioral Analysis Agencies and in 2017, 2018, 2019 and 2020 there will be a minimum of [REDACTED] Certified Behavioral Analysts and Applied Behavioral Analysis Agencies.

7.11.0 Credit Amounts:

7.11.1a The Contractor's quoted amount to be credited against the Administrative Fee is [REDACTED] for each [REDACTED] below the [REDACTED] [REDACTED] minimum access guarantee for any quarter in which the Network Facility (Inpatient, ALOC and Outpatient Clinic Groups for Mental Health and Substance Abuse combined) Access-for Urban Areas Guarantee, is not met by the Contractor.

7.11.1b The Contractor's quoted amount to be credited against the Administrative Fee is [REDACTED] for each [REDACTED] below the [REDACTED] [REDACTED] minimum access guarantee for any quarter in which the Network Facility (Inpatient, ALOC and Outpatient Clinic Groups for Mental Health and Substance Abuse combined) Access-for Suburban Areas Guarantee, is not met by the Contractor.

7.11.1c The Contractor's quoted amount to be credited against the Administrative Fee is [REDACTED] for each [REDACTED] below the [REDACTED] [REDACTED] minimum access guarantee for any quarter in which the Network Facility (Inpatient, ALOC and Outpatient Clinic Groups for Mental Health and Substance Abuse combined) Access-for Rural Areas Guarantee, is not met by the Contractor.

7.11.1d The Contractor's quoted amount to be credited against the Administrative Fee is [REDACTED] for each [REDACTED] below the [REDACTED] [REDACTED] minimum access guarantee for any quarter in which the Network Practitioner (Psychiatrist, Psychologist, Clinical Social Worker who qualifies for an "R" designation and Master's Level Clinician, combined) Access-for Urban Areas Guarantee, is not met by the Contractor.

7.11.1e The Contractor's quoted amount to be credited against the Administrative Fee is [REDACTED] for each [REDACTED] below the [REDACTED] minimum access guarantee for any quarter in which the Network Practitioner (Psychiatrist, Psychologist, Clinical Social Worker who qualifies for an "R" designation and Master's Level Clinician, combined) Access-for Suburban Areas Guarantee is not met by the Contractor.

7.11.1f The Contractor's quoted amount to be credited against the Administrative Fee is [REDACTED] for each [REDACTED] below the [REDACTED] minimum access guarantee for any quarter in which the Network Practitioner (Psychiatrist, Psychologist, Clinical Social Worker who qualifies for an "R" designation and Master's Level Clinician, combined) Access-for Rural Areas Guarantee, is not met by the Contractor.

7.11.1g The Contractor's quoted amount to be credited against the Administrative Fee is [REDACTED] for each Certified Behavioral Analyst or Applied Behavioral Analysis Agency that is below the Contractor's proposed guarantee for any quarter in which the Network Certified Behavioral Analyst and Applied Behavioral Analysis Facility Access Guarantee is not met by the Contractor.

7.11.2 Measurement of compliance with each access guarantee will be based on a "snapshot" of the Provider Network taken on the last day of each quarter within the current plan year. The results must be provided in the format contained in Exhibit I.Y.3 (RFP). The report is due thirty (30) Days after the end of each quarter.

7.12.0 Provider Credentialing Guarantee and Credit Amount

7.12.1 *Guarantee:* The MHSA Program's service level standard requires that at least [REDACTED] of receipt of a completed MHSA Provider application to join the MHSA Program's network, the review, including credentialing, will be completed and the Provider notified of the determination.

7.12.2 Credit Amount: The Contractor's quoted amount to be credited against the Administrative Fee is [REDACTED] for each Provider application to join the MHSA Program's Network where the review, including credentialing and notification of the determination to the Provider, is not completed within [REDACTED] of receipt of the complete application.

7.13.0 Financial Accuracy Guarantee and Credit Amount

7.13.1 Guarantee: The Program's service level standard requires that the MHSA Program's financial accuracy be maintained for a minimum of [REDACTED] of all claims processed and paid each Plan Year. Financial accuracy shall be measured by dividing the number of claims paid correctly by the total number of claims reviewed. Results shall be determined based on an annual audit conducted by the Department using statistical estimate techniques at the [REDACTED] confidence level with precision of +/- [REDACTED]. This standard shall be measured on an annual basis;

7.13.2 Credit Amount: The Contractor's quoted amount to be credited against the Administrative Fee for each [REDACTED] below the standard of [REDACTED] that the MHSA Program's financial accuracy isn't achieved, as calculated on an annual basis is [REDACTED].

7.14.0 Non-Financial Accuracy Guarantee and Credit Amount

7.14.1 Guarantee: The MHSA Program's service level standard requires that the MHSA Program's non-financial accuracy be maintained for a minimum of at least [REDACTED] of all claims processed and paid during the first Plan year. The MHSA Program's service level standard requires that the MHSA Program's non-financial accuracy be maintained for a minimum of [REDACTED] of all claims processed and paid during years two through five of the Agreement and any optional extension period. Non-financial accuracy shall be measured by dividing the number of claims with no errors by the total number of claims reviewed. Non-financial errors include, but are not limited to, entry of incorrect: patient name, date of service, Provider name, Provider Identification Number, and remark code, as well as incorrect application of Deductibles and/or Coinsurance amounts to the shared accumulators. Results shall be determined based on an annual audit

conducted by the Department using statistical estimate techniques at the [REDACTED]
[REDACTED];

7.14.2 Credit Amount: The Contractor's quoted amount to be credited against the Administrative Fee for each [REDACTED] below the standard of [REDACTED] of all claims processed and paid during the first contract year and [REDACTED] during years two through five of the Agreement and any optional extension period of the Agreement that the MHSA Program's non-financial accuracy rate isn't achieved, as calculated on an annual basis is [REDACTED].

7.15.0 Turnaround Time for Network Claims Adjudication Guarantee:

7.15.1 The MHSA Program's service level standard requires that at least, [REDACTED] of Provider-submitted claims that are received electronically, or in the Contractor's designated post office box, including claims which require adjustments, and require no additional information in order to be properly adjudicated, will be turned around within [REDACTED]. Turnaround time is measured from the date the Provider-submitted claim is received electronically or received in the Contractor's designated post office box to the date the Provider payment and Explanation of Benefits are received by the U.S. Post Office or Contractor's mailing agent;

7.15.2 Credit Amount: The Contractor's quoted amount to be credited against the Administrative Fee for each [REDACTED] below the standard of [REDACTED] of Provider-submitted claims, including claims which require adjustments, and that require no additional information in order to be properly adjudicated that are received by the Contractor and not turned around within [REDACTED] from the date the claim is received in the Contractor's designated post office box to the date the Provider payment and Explanation of Benefits are received by the mailing agent, as calculated on a quarterly basis, is [REDACTED].

7.16.0 Turnaround Time for Non-Network Claims Adjudication Guarantee

7.16.1 Guarantee: The MHSA Program's service level standard requires that, at least, [REDACTED] of Enrollee-submitted claims that are received in the Contractor's designated post office box, including claims which require adjustments, and require no additional information in order to be properly adjudicated, will be turned around within [REDACTED] of receipt. Turnaround time is measured from the date the Enrollee-submitted claim is received in the Contractor's designated post office box to the date the Enrollee payment and Explanation of Benefits are received by the U.S. Post Office or Contractor's mailing agent.

7.16.2 Credit Amount: The Contractor's quoted amount to be credited against the Administrative Fee for each [REDACTED] below the standard of [REDACTED] [REDACTED] of Enrollee-submitted claims, including claims which require adjustments, and require no additional information in order to be properly adjudicated that are received by the Contractor and not turned around within [REDACTED] from the date the claim is received in the Contractor's designated post office box to the date the Enrollee payment and Explanation of Benefits are received by the mailing agent, as calculated on a quarterly basis, is [REDACTED].

7.17.0 Clinical Referral Line Guarantees and Credit Amounts

7.17.1 Non-Network Clinical Referral Line Guarantee: The MHSA Program's service level standard requires that when an Enrollee calls the Clinical Referral Line for a non-emergency or non-urgent referral and a Network Provider is not available for an appointment within a time frame which meets the member's clinical needs, a referral will be made to an appropriate MHSA Non-Network Provider or program within [REDACTED] of the call in, a minimum of at least [REDACTED] [REDACTED] of the cases as calculated annually.

7.17.2 Non-Network Clinical Referral Line Credit Amount: The Contractor's quoted amount to be credited against the Administrative Fee for each [REDACTED] below the standard of [REDACTED] of cases when an Enrollee is referred to a Non-Network Provider within [REDACTED] Business Days (in non-

emergency or non-urgent situations) because a Network Provider is not available, as calculated annually, is [REDACTED].

7.17.3 Emergency Care Clinical Referral Line Guarantee: The MHSA Program's service level standard requires that [REDACTED] of Enrollees who call the CRL in need of life-threatening emergency care be referred to the nearest emergency room and be contacted within [REDACTED] to assure their safety. Additionally, [REDACTED] of Enrollees in need of the non-life-threatening emergency care shall be contacted by the Network Provider or the Contractor's Clinicians within [REDACTED] of the Enrollee's call to the CRL.

7.17.4 Emergency Care Clinical Referral Line Credit Amount: The Contractor's quoted amount to be credited against the Administrative Fee for each [REDACTED] below the standard of [REDACTED]) when an Enrollee requires emergency care, contact will be made by either the Network Provider or the Contractor's Clinicians within [REDACTED] of the Enrollee's call to the CRL calculated annually, is [REDACTED].

7.17.5 Urgent Care Clinical Referral Line Guarantee: The MHSA Program's service level standard requires at least [REDACTED] of Enrollees in need of urgent care be contacted by the Contractor to ensure that the Network Provider contacted the Enrollee within [REDACTED] of the Enrollee's call to the CRL.

7.17.6 Urgent Care Clinical Referral Line Credit Amount: The Contractor's quoted amount to be credited against the Administrative Fee for each [REDACTED] below the standard of [REDACTED] when an Enrollee requires urgent care, contact will be made by the Contractor to ensure that the Network Provider contacted the Enrollee within [REDACTED] of the call to the CRL, as calculated annually, is [REDACTED].

7.18.0 Utilization Review Guarantees and Credit Amounts

7.18.1 Outpatient Treatment Utilization Review Guarantee and Credit Amount

7.18.1a *Guarantee:* The MHSA Program's service level standard requires that at least [REDACTED] of outpatient treatment plans be reviewed and the Provider and Enrollee notified within [REDACTED] of receipt of the report as reported quarterly and calculated on an annual basis.

7.18.1b *Credit Amount:* The Contractor's quoted amount to be credited against the Administrative Fee for each [REDACTED] below the standard of [REDACTED] of outpatient treatment plans not reviewed and the Enrollee and Provider notified within [REDACTED] of receipt of the report as reported quarterly and calculated on an annual basis, is [REDACTED].

7.19.0 Inpatient Treatment Utilization Review Guarantee and Credit Amount

7.19.1 *Guarantee:* The MHSA Program's service level standard requires that at least [REDACTED] of requests for authorization of inpatient care be reviewed and completed within [REDACTED] from the receipt of the request and the Enrollee or Provider be notified within [REDACTED] of the determination as reported quarterly and calculated on an annual basis.

7.19.2 *Credit Amount:* The Contractor's quoted amount to be credited against the Administrative Fee for each [REDACTED] below the standard of [REDACTED] of requests for authorization of inpatient care that are not reviewed within [REDACTED] hours from the receipt of the request and the Enrollee or Provider notified within [REDACTED] of the determination as reported quarterly and calculated on an annual basis, is [REDACTED].

7.20.0 Appeal Guarantees and Credit Amounts

7.20.1 Inpatient Appeal Guarantee and Credit Amount

7.20.1a *Inpatient Appeal Guarantee:* The MHSA Program's service level standard requires that at least [REDACTED]

██████ of level one appeal for inpatient care must be reviewed by a Peer Advisor and a determination made within ██████ of the receipt of the appeal. Cases in which there has been no success in contacting the Provider despite the Contractor having made and documented ██████ written or telephonic attempts will be included as having met the standard. Cases in which the Provider is unavailable to discuss the appeal or to provide information necessary to the disposition of the appeal, causing the appeal's disposition to extend beyond the required timeframe, will be included as having met the standard. This standard will be reported quarterly and calculated on an annual basis;

7.20.1b Inpatient Appeal Credit Amount: The Contractor's quoted amount to be credited against the Administrative Fee for each ██████ below the standard of ██████ of level one appeals for inpatient care must be reviewed by a Peer Advisor and a determination made within ██████ of the receipt of the appeal as reported quarterly and calculated on an annual basis, is ██████.

7.20.1c Outpatient and ALOC Appeal Guarantee: The MHSA Program's service level standard requires that at least ██████ ██████ Outpatient Care and Alternative Levels of Care level one appeals must be reviewed by a Peer Advisor and a determination made within ██████ of the receipt of the appeal. Cases in which there has been no success in contacting the Provider despite the Contractor having made and documented ██████ written or telephonic attempts will be included as having met the standard. Cases in which the Provider is unavailable to discuss the appeal or to provide information necessary to the disposition of the appeal, causing the appeal's disposition to extend beyond the required timeframe, will be included as having met the standard. This standard will be reported quarterly and calculated on an annual basis.

7.20.1d Outpatient and ALOC Appeal Credit Amount: The Contractor's quoted amount to be credited against the Administrative Fee for each ██████ below the standard of ██████

██████ of Outpatient Care and Alternative Levels of Care level one appeals that are not reviewed by a Peer Advisor and a determination made within ██████ of the receipt of the appeal, as reported quarterly and calculated on an annual basis is ██████.

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 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 NYS and the unions representing State Employees enter into collective bargaining agreements, or the State otherwise requires changes in Plan 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 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 MHSA 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 DCS reserves the right to request, and the Contractor shall agree to provide additional information and documentation the DCS deems necessary to verify that a modification of the fees or guarantees is warranted. The DCS will agree to modify the fee(s) to the extent necessary to compensate the Contractor for documented additional costs determined by DCS to be reasonable and necessary. The Contractor will agree to modify the fee (s) to the extent necessary to relieve the DCS of the obligation to pay for Program services that are no longer required. The DCS will agree to modify guarantees as determined by DCS to be necessary to reflect MHSA 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 DCS with or without final resolution of any fee proposal.

ARTICLE IX: DEVELOPMENT OF SUMMARY PLAN DESCRIPTIONS AND BENEFIT SUMMARIES

9.1.0 The Contractor shall present to the Department its recommendations for the development of the necessary Summary Plan Descriptions and Benefit Summaries for the Empire Plan, Excelsior Plan and Student Employee Health Plan Mental Health and Substance Abuse Programs. The Department shall review the Contractor's recommendations and shall make the final determination regarding the manner in which the Summary Plan Descriptions and Benefit Summaries shall be developed and issued by the Contractor.

ARTICLE X: ENROLLMENT INFORMATION AND RECORDS

10.1.0 The Contractor shall maintain records in the United States from which may be determined at all times the names of all Enrollees covered hereunder, and their Dependents, and the benefits in force for each such Enrollee, together with the date when any coverage became effective and the effective date of any change in or termination of benefits.

10.2.0 The Department shall transmit enrollment information provided by the Enrollee to the Contractor for the Program in an electronic format consistent with Section 6.7.0 of this Agreement. The eligibility rules and the enrollment reports generated as a result of these eligibility rules shall be the sole means of determining valid enrollment for benefits under the Program.

10.3.0 The Department and the Enrollees/Dependents shall furnish to the Contractor all information that the Contractor may reasonably require with regard to any matters pertaining to the enrollment of Enrollees/Dependents under this Agreement. A person will not be entitled to or deprived of benefits under the Agreement due to clerical errors.

10.4.0 The Department agrees to provide the Contractor with reasonable access to records of the Department which may have a bearing on the benefits provided by the Contractor or calculation of the Contractor's Administrative Fee as set forth under Article XIII of this Agreement.

ARTICLE XI: DATA SHARING AND OWNERSHIP

11.1.0 All claims and other data related to the MHSA Program is the property of the State.

Upon the request of the Department, the Contractor shall share claims data with other NYSHIP carriers, Department consultants, the Department's Decision Support System contractor, and Department of Health's all payer claims database.

11.2.0 Except as directed by a court of competent jurisdiction, in New York State or as necessary to comply with applicable New York State or Federal law, or with the written consent of the Enrollee/Dependent, the Contractor shall not share, sell, release, or make the data available to third parties in any manner without the prior written consent of the Department.

ARTICLE XII: DCS PROGRAM CLAIMS REIMBURSEMENT

12.1.0 Provider Network Claims

12.1.1 The Contractor must contract with Network Providers. The amount charged to the MHSA Program shall be the contracted Network Provider fee, less any applicable Copayment and after the coordination of benefits when the claim is processed as secondary coverage.

12.1.2 Claim payments are to be made based on the requirements contained in Section IV and Articles 6.11.0 and 12.1.0 of this Agreement, including but not limited to each group's Copayments.

12.1.3 Throughout each Plan Year, the Contractor shall charge to the Program the incurred claims cost for Network services based on the amounts actually paid by the Contractor to Network Providers.

12.1.4 *Network Pricing Guarantee:* The Contractor is required to guarantee that the Actual Average Unit Cost (AAUC) for each category shall not exceed the proposed Guaranteed Average Unit Cost (GAUC).

12.1.4a Based on incurred claims for each Plan Year that are paid as of June 30th of the following year, the Contractor shall calculate the AAUC for

the Inpatient Services and Outpatient Services categories. Such Network Services shall include all services/days paid at the Network benefit level including services/days rendered by Non-Network Providers when the Contractor determines that it is appropriate for either access or clinical reasons. Network Services shall not include non-network services where the Contractor had no opportunity to direct the care or Transition of Care services. The calculation of the AAUC shall be equal to the amounts that would be paid by the Contractor to the Network Provider for Plan primary claims only and prior to the application of the Copayment and Bad Debt and Charity assessments.

12.1.4b The Contractor acknowledges that the GAUC for the Inpatient Services set forth in Exhibit E of this Agreement may incorporate the inpatient professional service component pertaining to global reimbursement arrangements. Amounts actually paid and reported to the Department for Inpatient Services will include the inpatient professional service component of global arrangements. Any adjustments in the calculation of the AAUC shall be at the sole discretion of the Department and subject to Article II, Agreement Duration and Amendments, of this Agreement

12.1.4c If the AAUC for each category exceeds the GAUC, the Contractor shall forfeit a portion of the Administrative Fee for failure to meet this guarantee, as follows:

12.1.4c(1) For each [REDACTED] the AAUC exceeds the Outpatient Services GAUC proposed in Exhibit V.A.2, the Contractor shall pay the Department a performance credit equal to [REDACTED] of the total Administrative Fee charged for the applicable Plan Year. Any amounts due from the Contractor to the Department for failure to meet the performance guarantee shall be applied as a credit against the Administration Fee charged to the MHSA Program within thirty (30) days after the Contractor is notified, in writing, that the calculated performance credit was approved by the Department. The performance credit for the

Outpatient Services GAUC shall not exceed ■■■ of the total Administrative Fee charged for the applicable Plan Year.

12.1.4c(2) For each ■■■ the AAUC exceeds the Inpatient and ALOC Services GAUC proposed in Exhibit E of this Agreement, the Contractor shall pay the Department a performance credit equal to ■■■ of the total Administrative Fee charged for the applicable Plan Year. Any amounts due from the Contractor to the Department for failure to meet the performance guarantee shall be applied as a credit against the Administration Fee charged to the MHSA Program within thirty (30) days after the Contractor is notified, in writing, that the calculated performance credit was approved by the Department. The performance credit for the Inpatient and ALOC Services GAUC shall not exceed ■■■ of the total Administrative Fee charged for the applicable Plan Year.

12.1.4d For the first Plan Year (2016), no change to the proposed GAUC will be allowed, except in the event of circumstances outside the control of the Contractor that may have a significant effect on cost, such as legislation or substantial enrollment risk profile fluctuations. Any proposed change made by the Contractor in the GAUCs for the 2016 Plan year shall be at the sole discretion of the Department and subject to Article II, Agreement Duration and Amendments, of this Agreement.

12.1.4e For each Plan year after 2016, the Contractor may request in writing an increase in the GAUC. The annual increase shall not exceed the percentage increase in CPI-W for Medical Care, as reported by the Bureau of Labor Statistics for the month of July of the preceding calendar year. If the prior increase in the GAUC occurred more than 12 months prior to the effective date of the requested increase, the maximum increase shall not exceed the cumulative CPI-W observed since the implementation of the prior increase. Any increase in the GAUC requires written approval by the Department and amendment of the Agreement, upon documentation by the Contractor to the satisfaction

of the Department, that such increase is required to maintain adequate Network access.

12.1.4f For purposes of both the development of the GAUC and AAUC, claims processed as secondary to the Plan shall be excluded from the calculations and network pricing guarantees. In addition, the GAUC and AAUC shall not include any fees or assessments set forth in Article XIV of this Agreement

12.2.0 Non-Network Claims

12.2.1 The Contractor will accurately process Non-Network claims and make payments directly to the Enrollee (or Approved Facility) in a timely manner. Except for Emergency Care or as otherwise required by law (e.g., surprise bills), payment will be made to the Enrollee even if the submitted claim form requests assignment of benefits.

12.2.2 The Contractor will process Non-Network claims, as follows: Payments are to be made based on the requirements contained in Section IV of Exhibit B (RFP) including but not limited to each group's Copayments, Co-insurance, Shared Accumulators and benefit maximums based on the member's benefit program assignment as reflected in Exhibit D of the Agreement.

12.2.3 The Contractor will process Non-Network claims, as follows:

12.2.3a For the Empire Plan: using Reasonable and Customary charges based on the 90th percentile for each service performed, as determined by Fair Health and the Reasonable and Customary charge for all inpatient and alternative levels of care is 90% of billed charges.

12.2.3b For the Excelsior Plan the Reasonable and Customary charge is the lower of billed charges OR 110% of the Medicare allowance; and

12.2.3c For the Student Employee Health Plan the Reasonable and Customary charge is the lower of billed charges OR 110% of the Medicare allowance.

12.2.4 Where a Network Provider is not available because of clinical or access considerations, the Contractor must negotiate a Single Case Agreement with a Non-Network Provider in a manner consistent with what is typically allowed for a Network Provider in the same discipline for the same service. The Contractor must pay the claim and charge the MHSA Program as if the services were incurred by a Network Provider and include these charges in the calculations of the annual AAUC.

12.2.5 The Contractor will update its database with FAIR Health, Inc.'s database of Reasonable and Customary amounts in a timely manner, at a minimum of twice a year.

ARTICLE XIII: ADMINISTRATIVE FEE

13.1.0 The Contractor shall:

13.1.1 Agree that the following non-exclusive costs are not allowable and shall not be charged to the MHSA Program as either a direct or formula expense: commissions, non-Plan advertising costs, capital expenditures for improvement or acquisition of facilities, entertainment costs, including social activities or cost of alcoholic beverages, costs of fund raising, costs for political activities, costs for attendance at conferences or meetings of professional organizations unless attendance is necessary in connection with the MHSA Program and the Contractor received prior written approval by the Director of the Employee Benefits Division and any costs related to or associated with the preparation and submission of a competitive proposal, including but not limited to the Contractor's Proposal, Exhibit C;

13.1.2 Agree that the Department shall calculate the total Administrative Fee payable to the Contractor for each month by multiplying the per Administrative Fees of [REDACTED], by the number of Enrollees in force each month as reported by the New York State Benefit Eligibility and Accounting System on the first Thursday of each month. The Department shall furnish to the Contractor a written statement for each month showing the number of Plan contracts then in force;

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- 13.1.3** Be bound by its Administrative Fee, as proposed in the Contractor's Proposal, Exhibit C, for the entire term of the Agreement unless amended in writing by the Parties and approved by the AG and OSC;
- 13.1.4** Manage all MHSA Program Enrollees based on the Contractor's Administrative Fee, as proposed by the Contractor in its Cost Proposal;
- 13.1.5** Implement any changes necessary to accommodate MHSA Program modifications resulting from collective bargaining, legislation or within the statutory discretion of the State within 60 days of notice or earlier, if required by law;
- 13.1.6** Agree not to request a higher Administrative Fee, and the Department will not consider any increase to the Administrative Fee, that is not based on a material change to the MHSA Program requiring the Contractor to incur additional costs. The determination of what constitutes a material change will be at the sole discretion of the Department;
- 13.1.7** Submit detailed documentation of additional administrative/clinical costs, over and above existing administrative/clinical costs, with any request for an increase in the Administrative Fee resulting from a material change in the benefit structure of the MHSA Program. The Department reserves the right to request and the Contractor agrees to provide any additional information and documentation the Department deems necessary to make its determination whether a the Contractor's request for an increase to the Administrative Fee is approved. The Department's decision to modify the Administrative Fee to the extent necessary to compensate the Contractor for documented additional costs incurred shall be at the sole discretion of the Department, subject to the approval of a formal written amendment to the Agreement, signed by the Parties, and approved by the New York State Attorney General and New York State Office of State Comptroller;
- 13.1.8** Implement all benefit designs as required by the Department with or without final resolution of any request by the Contractor for a higher Administrative Fee. Refusal to implement benefit design changes will constitute a material breach of this Agreement and the Department shall take any action as may be appropriate and provided for by law, rule or in this Agreement, including, but not limited to, seeking compliance and recovering damages; and

13.1.9 Administrative claims incurred during the coverage period of this Agreement but processed/paid after the last day of coverage, as well as applicable Disabled Lives claims incurred after the last day of coverage of the Agreement will be administered by the Contractor. An Administrative Fee will not be payable/due beyond the termination date of the Agreement.

ARTICLE XIV: Payments/(Credits) to/from the Contractor

14.1.0 The Contractor agrees to manage such financial transactions in accordance with the following:

14.1.1 The Contractor will bill the Department periodically, as proposed, by the Contractor, after claims have been processed. The Department shall pay the Contractor by “wire transfer” within seven days of having received an accurate invoice, as determined by the Department, of the claims processed by the Contractor.

14.1.2 The Plan will pay an Administrative Fee on a monthly basis within thirty (30) Days after receipt of an accurate invoice, as determined by the Department. Any credit amounts due from the Contractor to the Department for failure to meet the performance guarantees set forth in the Agreement shall be applied as a credit against the Administrative Fee charged to the MHSA Program. Alternatively, the Department may request and receive payment of any performance guarantee amount directly from the Contractor, as opposed to a credit against the Administrative Fee payable to the Contractor.

14.1.3 Upon final audit determination by the Department, any audit liability amount assessed by the Department shall be paid/credited to the MHSA Programs within thirty (30) Days of the date of the Department’s final determination, or within thirty (30) Days of receipt of recoveries related to fraud or abuse or Department errors.

14.1.4 The Contractor shall analyze and monitor claim submissions to promptly identify errors, fraud and/or abuse and report to the State such information in a timely fashion in accordance with a State approved process. The Contractor will credit the MHSA Program the amount of any overpayment made by the Contractor regardless of whether any overpayments are recovered from the Provider and/or Enrollee in instances where a claim is paid in error due to Contractor error. The

Contractor shall report fraud and abuse to the appropriate authorities. In cases of overpayments resulting from errors only found to be the responsibility of the State, or due to fraud and abuse, the Contractor shall use reasonable efforts to recover any overpayments and credit 100% of any recoveries to the MHSA Program within thirty (30) Days of receipt of such recoveries; however, the Contractor is not responsible to credit amounts that are not recovered.

14.1.5 Litigation recoveries and settlements shall be paid/credited to the MHSA Program within fifteen (15) Days of receipt by the Contractor.

14.1.6 This Agreement is not subject to Article XI-A of NYS Finance Law. The Contractor agrees that Program Services provided under the Agreement shall continue in full force and effect for a minimum of at least thirty (30) days beyond the payment due date as set forth in this Article XIV. If after the thirty-fifth (35) calendar day after receipt of an accurate invoice, as set forth in this Article XIV, the Contractor has not yet received payment from the State for said invoice, the Contractor may proceed under the Dispute Resolution provision in Appendix B and the Agreement shall remain in full force and effect until such final decision is made, unless the Parties can come to a mutual agreement, in which case, the Agreement shall also remain in full force and effect.

14.1.7 The Contractor will pay the medical carrier/third party administrator on a quarterly basis an amount billed for Shared Communication Expenses. The Contractor will be notified prior to the beginning of each Plan Year the amount of Shared Communication Expenses that will be billed.

14.1.8 The Contractor shall seek reimbursement of the Shared Communications Expense from the Department by including the amount with the voucher for the payment of the next Administrative Fee to be paid.

14.2.0 The Contractor will be responsible for assessments as follows:

14.2.1 The Contractor shall calculate the applicable bad debt and charity assessments each month from the applicable paid claims and may charge the MHSA Program at the time this assessment is paid to the regulatory agency/intermediary by the Contractor.

14.2.2 The Contractor shall advise the Department of any new applicable assessments in a timely manner.

14.2.3 The Contractor shall bill the MHSA Program for any new assessments within thirty (30) days after the amounts are paid to the regulating entity.

ARTICLE XV: REPORTS AND CLAIM FILES

15.1.0 Annual Reports

15.1.1 *Annual Financial Report:* The Contractor must submit an annual experience report of the Program's charges and credits no later than seventy-five (75) Days after the end of each Calendar Year. These statements must detail, at minimum, claims paid during the year, projected incurred claims not yet paid, administration costs, performance credits, etc. Such detail must include all charges by the Contractor to the Program.

15.1.2 *Annual Premium Renewal Report:* The Contractor must submit an Annual Premium Renewal no later than September 1st of each Calendar Year. This report must detail all assumptions utilized to support recommended premium level necessary for the following Plan Year. The report must include, but not be limited to: paid claim amounts; projected incurred claims; trend; Administrative Fees and changes in enrollment.

15.1.3 *Annual Summary Reporting:* The Contractor must prepare and present to the Department, GOER, Division of Budget and NYS employee unions an annual report that details MHSA Program performance and industry trends. This presentation shall include, at a minimum, comparisons of the MHSA Program to book of business statistics and other similar plan statistics. Clinical, financial and service issues are to be comprehensively addressed. The annual presentation and report is due each May after the end of each complete Calendar Year.

15.1.4 *Annual Report of Claims and Credits Paid by Agency:* The Contractor must submit a report with summary level claims and credits paid by agency. The Contractor must submit this report using the data elements specified by the Department in Exhibit II.F (RFP). The report is due thirty (30) Days after the end of the Calendar Year.

15.2.0 Quarterly Reports

15.2.1 *Quarterly Financial Summary Reports:* The Contractor must submit quarterly financial reports which present the MHSA Program's experience for the most recent quarter (based on a Calendar Year) and the experience from the beginning of the Calendar Year to the end of the quarter being reported. The quarterly reports must also include projections of:

- annual financial performance;
- premium projections;
- assessment of MHSA Program costs;
- incurred claim triangles;
- audit recoveries;
- settlement and litigation recoveries;
- administrative expenses;
- trend statistics; and
- such other information as the Department deems necessary.

The reports are due on a quarterly basis, fifteen (15) Days after the end of the reporting period;

15.2.2 *Quarterly Performance Guarantee Report:* The Contractor must submit quarterly the MHSA Program's Performance Guarantee report that details the Contractor's compliance with all of the Contractor's proposed Performance Guarantees. The report should include the areas of: Implementation; customer service (telephone availability; telephone response time; abandonment rate and blockage rate); enrollment management; reporting; network composition; provider access; provider credentialing; financial and non-financial accuracy; turnaround time for processing network and non-network claims; non-network Clinical Referral Line; emergency care Clinical Referral Line; urgent care Clinical Referral Line; outpatient and inpatient Utilization Review; and inpatient and outpatient appeals. The Contractor must submit this report using the data elements specified by the Department in Exhibit II.F (RFP). Documentation of compliance should be included with this report. The report is due thirty (30) Days after the end of the quarter;

15.2.3 Quarterly Utilization Report: The Contractor must submit quarterly the MHSA Program's Quarterly Utilization Report that details the MHSA Program's care utilization by type of service for both network and non-network authorizations, by type of treatment (inpatient, outpatient, ALOC) Applied Behavioral Analysis, collective bargaining unit, age of the member, type of Dependent, and any other category as requested by the Department. The Contractor must submit this report using the data elements specified by the Department in Exhibit II.F (RFP). The report is due forty-five (45) Days after the end of each quarter;

15.2.4 Quarterly Network Access: The Contractor must submit a measurement of the Network access based on a "snapshot" of the network taken on the last day of each quarter. The report is due thirty (30) Days after the end of the quarter;

15.2.5 Quarterly Coordination of Benefit Report: The Contractor must submit a report that details the amount received as a result of coordinating benefits with other health plans including Medicare. The Contractor's report should identify the COB source, the Enrollee, the original claim amounts, and the amount received from the other insurance carriers or Medicare. The final format of this report will be determined by the Department in consultation with the Contractor. The report is due thirty (30) Days after the end of the quarter;

15.2.6 Quarterly Participating Agency Claims: The Contractor must submit a quarterly report that presents summary level claim information by Participating Agency. The Contractor shall submit this report using the data elements specified by the Department in Exhibit II.F (RFP), unless otherwise specified by the Department. The report is due thirty (30) Days after the end of the quarter;

15.2.7 Quarterly Website Analytics Report: The Contractor must submit a quarterly report that provides comprehensive performance information for the Contractor's customized MHSA Program website as set forth in Section 6.5.5 of this Agreement. The report must include summarized and detailed website performance information and statistics, as well as proposed modifications to the layout and design of the website to improve communications with Enrollees. The report is due thirty (30) Days after the end of the quarter; and

15.2.8 Quarterly Provider Audit Report: The Contractor must securely submit a provider audit report to the Department summarizing audits planned, initiated, in

progress and completed, as well as audit findings, recoveries and any other enforcement action by the Contractor. The report is due thirty (30) Days after the end of each quarter. The Contractor must inform the Department in writing of any allegation or other indication of potential fraud and abuse identified within seven (7) Business Days of receipt of such allegations or identification of such potential fraud and/or abuse. The Department must be fully informed of all fraud and/or abuse investigations impacting the MHSA Program upon commencement, regardless of whether the individual fraud and/or abuse investigation has a material financial impact to the State.

15.3.0 Monthly Reports and Claim Files

15.3.1 *Monthly Report of Paid Claims by the Month Incurred:* The Contractor must submit a monthly report that provides summarized paid claims by the month incurred. The Contractor must submit this report using data elements acceptable to the Department. The report is due thirty (30) Days after the end of the month; and

15.3.2 *MHSA Program Customer Service Monthly Reports:* Each month the Contractor must submit a customer service report that measures the Contractor's customer service performance including call center availability, call center telephone response time, the telephone abandonment rate, the telephone blockage rate, claims processing, enrollment, and claims turnaround. The final format of these reports will be determined by the Department in consultation with the Contractor. The customer service report is due thirty (30) Days after the end of the month.

15.3.3 *Detailed Claim File Data:* The Contractor must transmit to the Department and/or its Decision Support System (DSS) Vendor a computerized file via secure transfer, containing detailed claim records using data elements acceptable to the Department to support all claims processed each reporting period and invoiced to the Department. The Department requires that all claims processed and/or adjusted be included in claims data. The file must facilitate reconciliation of claim payments to amounts charged to the MHSA Program. The Contractor must securely forward the required claims data to the Department and/or its DSS vendor within fifteen (15) Days after the end of each month and submit a summarized report by month utilizing a format acceptable to the Department.

ARTICLE XVI: TRANSITION AND TERMINATION OF CONTRACT

16.1.0 The Contractor must commit to fully cooperate with the successor contractor to ensure the timely, receipt of all information necessary to transfer administration of the MHSA Program.

16.1.1 The Contractor must, within one hundred twenty (120) Days prior to the end of this Agreement, or within forty-five (45) Days of notification of termination, if this Agreement is terminated prior to the end of its term, submit to the Department for approval a detailed written Transition Plan, which outlines, at a minimum, the tasks, milestones and deliverables associated with:

16.1.1a Transition of MHSA Program data, including but not limited to a minimum of one year of historical Enrollee claim data including Providers' telephone numbers, names, addresses, zip codes, licensure types and tax identification numbers, detailed Coordination of Benefits data, high volume Provider data, report formats, certification/ authorization approved - through dates, disability determination approved-through dates, any exceptions that have been entered into the adjudication system on behalf of the Enrollee such as a Single Case Agreement, as well as other data the successor contractor may request and the Department approves during implementation of the MHSA Program in the format acceptable to the Department. The transition of data files should include but not be limited to the following:

16.1.1a(1) Providing a test file to the successor contractor at least seventy-five (75) days in advance of the Implementation Date to allow the successor contractor to address any potential formatting issues;

16.1.1a(2) Providing one or more pre-production files at least eight (8) weeks prior to implementation that contains the above MHSA Program data as specified by the Department and working in conjunction with the successor contractor;

16.1.1a(3) Providing a second production file four (4) weeks prior to implementation; and

16.1.1a(4) Providing a third production file to the successor contractor by the close of business three (3) days after the Agreement terminates;

16.1.2 Within fifteen (15) Business Days from receipt of the Contractor's proposed Transition Plan, the Department shall either approve the Transition Plan or notify the Contractor, in writing, of the changes required to the Transition Plan so as to make it acceptable to the Department.

16.1.3 Within fifteen (15) Business Days from the Contractor's receipt of the required changes, the Contractor shall incorporate said changes into the Transition Plan and submit such revised Transition Plan to the Department.

16.1.4 The Contractor shall be responsible for transitioning the MHSA Program in accordance with the approved Transition Plan.

16.1.5 To ensure that the transition to a successor contractor provides Enrollees with uninterrupted access to MHSA Program benefits and associated customer services, and to enable the Department to effectively manage the Agreement, the Contractor must provide the following obligations and deliverables to the MHSA Program through the final financial settlement of the Agreement, including but not limited to:

16.1.5a Provide all Contractor-provided services associated with claims incurred on or before the scheduled termination date of the Agreement, including but not limited to: paying network claims and, manual submit claims including but not limited to: Medicaid, out-of-network claims, foreign claims, Coordination of Benefit claims, Medicare; reimbursing late filed claims if warranted; repaying or recovering monies on behalf of the MHSA Program for Medicare claims; retaining NYBEAS access and continuing to provide updates on pending litigation and settlements that the Contractor or the NYS Attorney General's Office has/may file on behalf of the MHSA Program. In addition, the Contractor must continue to provide the Department access to any online claims processing data

and history and online reporting systems through the final settlement dates, unless the Department notifies the Contractor that access may be ended at an earlier date;

16.1.5b Complete all reports required in Article XV of this Agreement;

16.1.5c Provide the MHSA Program with sufficient staffing in order to address State audit requests and reports in a timely manner;

16.1.5d Agree to fully cooperate with all Department and/or OSC audits consistent with the requirements of Article XVII of the Agreement and Appendices A and B;

16.1.5e Perform timely reviews and responses to audit findings submitted by the Department and the Comptroller's audit unit in accordance with the requirements set forth in Article XVII "Audit Authority" Section VII, Contract Provisions and Appendices A and B; and

16.1.5f Remit reimbursement due the MHSA Program within fifteen (15) days upon final audit determination consistent with the process specified in Article XVII, "Audit Authority" and Article XIV "Payments/credits to/from the Contractor" of the Agreement and Appendices A and B.

16.1.6 The Contractor must receive and apply enrollment updates, keep Dedicated Call Center phone lines open with adequate available staffing to provide customer service at the same levels provided prior to termination of the Agreement, adjusting phone scripts, and transferring calls to the successor contractor's lines during the transition period;

16.1.7 The Contractor must work cooperatively with the successor contractor and the Department to develop an approach to ensure a smooth transition for members who must change Providers to maintain the network level of benefits;

16.1.8 The Contractor must prepare and communicate with the successor contractor on a case by case basis, a plan to extend and manage the care of high risk Enrollees who are nearing the end of a course of treatment beyond the transition period;

16.1.9 The Contractor must continue to clinically manage and pay for Covered Services for Enrollees determined to be Totally Disabled on the last day of the Contract, for ninety (90) Days or until the disability ends, whichever occurs first;

16.1.10 The Contractor must continue to manage and pay for Covered Services of Enrollees who are confined as inpatient or in Residential Treatment Centers on the Agreement termination date until the earlier of the step down of care or midnight on the 90th day subsequent to the Agreement termination date;

16.1.11 The Contractor must forward to the successor contractor on a weekly basis all misdirected authorization requests received by the Contractor after the Agreement termination date for a period of ninety (90) days.

16.1.12 If the Contractor does not meet the Transition Plan requirements in the time frame stated above, the Contractor [REDACTED] of all Administrative Fees (prorated on a daily basis) from the due date of the Transition Plan requirement(s) to the date the Transition Plan requirement(s) are completed to the satisfaction of the Department.

ARTICLE XVII: AUDIT AUTHORITY

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

17.1.0 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;

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

17.2.1 Review of the Contractor's activities and records relating to the documentation of its performance under this Agreement in areas such as determination of Enrollee or Dependent eligibility and application of various Department program administrative features (e.g., dependent survivor benefits, reasonable adjudication of disabled dependent status);

-
- 17.2.2** Comparison of the information in the Contractor's enrollment file to that on the enrollment reports issued to the Contractor by the Department; and
- 17.2.3** 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 Article XV "Reports and Claim Files" of this Agreement.
- 17.3.0** The Contractor shall maintain and make available documentary evidence necessary to perform the 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;
- 17.4.0** 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;
- 17.5.0** The Contractor shall support audits conducted by the Department, Office of the State Comptroller or any designee of these agencies, as follows, including but not limited to:
- 17.5.1** Providing ample audit resources including access to the Contractor's online system to the Department and OSC at their respective offices through the date of the final financial settlement of the Agreement;
- 17.5.2** The capability and contractual right of the State to effectively audit the MHSA Program's Provider Network, including the use of statistical sampling audit techniques and the extrapolation of errors; and
- 17.5.3** Providing full cooperation with all Department and/or OSC audits consistent with the requirements of Appendices A and B and as set forth in this Agreement including provision of access to protected health information and all other confidential information when required for audit purposes as determined by the Department and/or OSC as appropriate. The Contractor must respond to all State (including OSC) audit requests for information and/or clarification within fifteen (15) Business Days. The Contractor must perform timely reviews and

respond in a time period specified by the Department to preliminary findings submitted by the Department or the OSC's audit unit in accordance with the requirements of Article XVII "Audit Authority" in this Agreement. Such audits may include, but are not limited to both electronically submitted and paper claims. Use of statistical sampling of claims and extrapolation of findings resulting from such samples shall be acceptable techniques for identifying claims errors. The Contractor shall facilitate audits of Network Providers, including on-site audits, as requested by the Department and/or OSC;

17.6.0 The Contractor shall, at the Department's request, and in a time period specified by the Department, 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;

17.7.0 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 provision set forth in Appendix B of this Agreement;

17.8.0 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; and

17.9.0 The audit provisions contained herein shall in no way be construed to limit the audit authority or audit scope of the OSC 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 XVIII: CONFIDENTIALITY

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

-
- 18.1.0** All claims and enrollment 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 Section VII of this Agreement, and for providing the Department with material and information as may be specified elsewhere in this Agreement;
- 18.2.0** Except as directed by a court of competent jurisdiction located in the State of New York or as necessary to comply with applicable New York State or Federal law, or with the written consent of the Enrollee/Dependent, 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;
- 18.3.0** 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 Protection 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 Enrollees and Dependents;
- 18.4.0** 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 that strictly conforms to the various confidentiality provisions of this Agreement; and
- 18.5.0** 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 XIX: USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION

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

19.2.0 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), respectively. The Contractor further acknowledges that the Contractor is a HIPAA “business associate” of the Department as a consequence of the Contractor’s provision of services to and/or on behalf of the Department 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.

19.3.0 *Permitted Uses and Disclosures of the Department’s PHI:* The Contractor may 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 Contract if such use is necessary for the Contractor's proper management and administration or to carry out the Contractor's legal responsibilities, or if such disclosure is required by law or the Contractor obtains reasonable assurances from the person to whom the information is disclosed that it shall be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Contractor of any instances of which it is aware in which the confidentiality of the PHI has been breached.

19.4.0 *Nondisclosure of the Department's PHI:* The Contractor shall not use or further disclose the Department's PHI other 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 practical 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.

19.5.0 *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 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, or that it transmits on behalf of the Department pursuant to this Agreement.

19.6.0 *Breach Notification:*

19.6.1 *Reporting:* The Contractor shall report to the Department any breach of unsecured PHI, even if the breach is not reportable under HIPAA, including any use or disclosure of the Department's PHI otherwise than as provided for by this Agreement, of which the Contractor becomes aware. Further, the Contractor shall report to the Department any security incident of which it becomes aware. "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.

19.6.2 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:

19.6.2a the date of the breach incident;

19.6.2b the date of the discovery of the breach;

19.6.2c a brief description of what happened;

19.6.2d a description of the types of unsecured PHI that were involved;

19.6.2e identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the breach;

19.6.2f 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

19.6.2g any other details necessary to complete an assessment of the risk of harm to the individual.

19.6.3 The Department will be responsible for providing 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 and the media, as required by 45 CFR Part 164.

19.6.4 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.

19.6.5 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.

19.6.6 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.

19.7.0 *Associate’s Agents:* The Contractor shall require all of its agents or Key Subcontractors or Affiliates 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, in writing, 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.

19.8.0 *Availability of Information to the Department:* The Contractor shall make available to the Department such information and documentation as the Department may require regarding any disclosures of PHI by the Contractor to fulfill the Department’s obligations to provide access to, to provide a copy of, and to account for disclosures of 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.

19.9.0 *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’s PHI into copies of the Department’s PHI as maintained by the Contractor.

19.10.0 *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.

19.11.0 Termination:

19.11.1 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 or of the Agreement with respect to the Contractor's obligations under this Article.

19.11.2 *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.

19.12.0 *Indemnification:* The Contractor agrees to indemnify, defend and hold harmless the State, the Department and Department's 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 Article or from any acts or omissions related to this Article by the Contractor or its employees, officers, Key Subcontractors or Affiliates, 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 under this Article shall survive the expiration or termination of this Agreement.

19.13.0 Miscellaneous:

19.13.1 *Amendments:* This Article may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized

representatives of the Parties. The Parties agree to take such action as is necessary to amend this Article from time to time as is necessary to achieve and maintain compliance with the requirements of 45 CFR Parts 160-164.

19.13.2 *Survival:* The respective rights and obligations of the Business Associate (Contractor), and Covered Entity under HIPAA as set forth in this Article shall survive termination of this Agreement.

19.13.3 *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.

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

ARTICLE XX: NOTICES

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

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

20.1.2 by facsimile transmission;

20.1.3 by personal delivery;

20.1.4 by expedited delivery service; or

20.1.5 by e-mail.

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

State of New York Department of Civil Service

Name: [REDACTED]

Title: Director, Employee Benefits Division

Address: Employee Benefits Division, Room 1106, Albany, NY 12239

Telephone Number: [REDACTED]

Facsimile Number: [REDACTED]

E-Mail Address: [REDACTED]

ValueOptions, Inc.

Name: [REDACTED]
Title: Executive Vice President and Chief Financial Officer
Address: 240 Corporate Boulevard, Norfolk, VA 23502
Telephone Number: [REDACTED]
Facsimile Number: [REDACTED]
E-Mail Address: [REDACTED]

With a copy to:
Name: [REDACTED]
Senior Vice President and General Counsel

Telephone Number: [REDACTED]
Facsimile Number: [REDACTED]
E-Mail Address: [REDACTED]

20.2.0 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.

20.3.0 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 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 Contract, 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 Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that after should it seek to renew or extend the Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of the Contract 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 Contract.

21.3.0 During the term of the Contract, 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 ninety (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.

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 Contract, and pursue a responsibility review with 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 Contract 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.

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Contractor: ValueOptions, Inc.

Contract Number: C000625

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

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

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

Date: 11/19/15

By: _____

Name: _____

Title: Executive Deputy Comm

VALUEOPTIONS, INC.

Date: 10/16/15

By: _____

Name: Douglas Thompson

Title: EVP & CFO

CITY
STATE OF Virginia) ss:
COUNTY OF Norfolk

On the 16th day of October, 2015, before me personally came Douglas Thompson, 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 EVP + CFO of ValueOptions, Inc., the corporation or organization described in and which executed the above instrument; and that (s)he signed his/her name thereto.

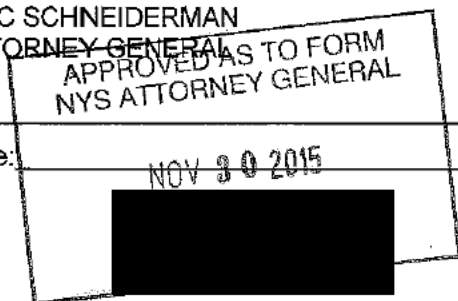
My commission expires: 8-31-17

Approved as to Form:

ERIC SCHNEIDERMAN
ATTORNEY GENERAL

By: _____

Date: _____

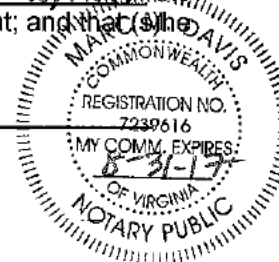


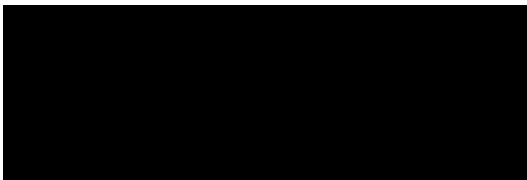
Approved:

THOMAS P. DINAPOLI
COMPTROLLER

By: _____

Date: _____





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

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

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

If yes:

Shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of their compliance with such Principles. Yes X 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.

Mental Health and Substance Abuse Program

Contract #C000625

Placeholder for Exhibit B: RFP Amendments and the Request for Proposals entitled, “ Mental Health and Substance Abuse Program for the Empire Plan, Excelsior Plan and Student Employee Health Plan,” dated March 13, 2014 and Exhibit B-1, the official Department response to questions raised concerning the RFP dated April 17, 2014

Mental Health and Substance Abuse Program

Contract #C000625

Placeholder for Exhibit C: Contractor's Proposal; Exhibit C-1: Written responses to the Management Interview, and Exhibit C-2: Related Materials Clarifying the Contractor's Proposal which includes the Contractor's responses to the Department's inquiries dated May 27, 2014 and July 2, 2014

Mental Health and Substance Abuse Program

Contract #C000625

Placeholder for Exhibit D: Summary Plan Descriptions and Benefit Summaries for the Mental Health and Substance Abuse Program for the Empire Plan, Excelsior Plan and Student Employee Health Plan

**Mental Health and Substance Abuse Program RFP #2014-MH-1
for the Empire Plan, Excelsior Plan and Student Employee Health Plan
Guaranteed Average Unit Cost Quote - Network Outpatient Services**

CPT/HCPCS Code	Provider Licensure(4)
90791	MD Level
90791	Doctoral Level
90791	Masters Level
90792	MD Level
90792	Doctoral Level
90792	Masters Level
90832	MD Level
90832	Doctoral Level
90832	Masters Level
90833	MD Level
90833	Doctoral Level
90833	Masters Level
90834	MD Level
90834	Doctoral Level
90834	Masters Level
90836	MD Level
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90868	MD Level
90868	Doctoral Level
90868	Masters Level
90870	MD Level
90870	Doctoral Level
90870	Masters Level
90899	MD Level
90899	Doctoral Level
90899	Masters Level
96101	MD Level
96101	Doctoral Level
96101	Masters Level
96102	MD Level
96102	Doctoral Level

Mental Health and Substance Abuse Program RFP #2014-MH-1
for the Empire Plan, Excelsior Plan and Student Employee Health Plan
Guaranteed Average Unit Cost Quote - Network Outpatient Services

96102	Masters Level
96103	MD Level
96103	Doctoral Level
96103	Masters Level
96116	MD Level
96116	Doctoral Level
96116	Masters Level
96118	MD Level
96118	Doctoral Level
96118	Masters Level
96119	MD Level
96119	Doctoral Level
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99217	Masters Level
99221	MD Level
99221	Doctoral Level
99221	Masters Level
99222	MD Level
99222	Doctoral Level
99222	Masters Level
99223	MD Level
99223	Doctoral Level
99223	Masters Level
99231	MD Level
99231	Doctoral Level

Mental Health and Substance Abuse Program RFP #2014-MH-1
for the Empire Plan, Excelsior Plan and Student Employee Health Plan
Guaranteed Average Unit Cost Quote - Network Outpatient Services

99231	Masters Level
99232	MD Level
99232	Doctoral Level
99232	Masters Level
99233	MD Level
99233	Doctoral Level
99233	Masters Level
99235	MD Level
99235	Doctoral Level
99235	Masters Level
99236	MD Level
99236	Doctoral Level
99236	Masters Level
99238	MD Level
99238	Doctoral Level
99238	Masters Level
99239	MD Level
99239	Doctoral Level
99239	Masters Level
99241	MD Level
99241	Doctoral Level
99241	Masters Level
99242	MD Level
99242	Doctoral Level
99242	Masters Level
99243	MD Level
99243	Doctoral Level
99243	Masters Level
99244	MD Level
99244	Doctoral Level
99244	Masters Level
99245	MD Level
99245	Doctoral Level
99245	Masters Level
99251	MD Level
99251	Doctoral Level
99251	Masters Level
99252	MD Level
99252	Doctoral Level
99252	Masters Level
99253	MD Level
99253	Doctoral Level
99253	Masters Level
99254	MD Level
99254	Doctoral Level
99254	Masters Level
99255	MD Level
99255	Doctoral Level
99255	Masters Level
99281	MD Level
99281	Doctoral Level
99281	Masters Level
99282	MD Level
99282	Doctoral Level
99282	Masters Level
99283	MD Level
99283	Doctoral Level
99283	Masters Level
99284	MD Level
99284	Doctoral Level
99284	Masters Level
99285	MD Level
99285	Doctoral Level
99285	Masters Level
99291	MD Level
99291	Doctoral Level
99291	Masters Level
99304	MD Level
99304	Doctoral Level

**Mental Health and Substance Abuse Program RFP #2014-MH-1
for the Empire Plan, Excelsior Plan and Student Employee Health Plan
Guaranteed Average Unit Cost Quote - Network Outpatient Services**

99304	Masters Level
99305	MD Level
99305	Doctoral Level
99305	Masters Level
99306	MD Level
99306	Doctoral Level
99306	Masters Level
99307	MD Level
99307	Doctoral Level
99307	Masters Level
99308	MD Level
99308	Doctoral Level
99308	Masters Level
99309	MD Level
99309	Doctoral Level
99309	Masters Level
99310	MD Level
99310	Doctoral Level
99310	Masters Level
99334	MD Level
99334	Doctoral Level
99334	Masters Level
99342	MD Level
99342	Doctoral Level
99342	Masters Level
99347	MD Level
99347	Doctoral Level
99347	Masters Level
99348	MD Level
99348	Doctoral Level
99348	Masters Level
99349	MD Level
99349	Doctoral Level
99349	Masters Level
99408	MD Level
99408	Doctoral Level
99408	Masters Level
99409	MD Level
99409	Doctoral Level
99409	Masters Level
99442	MD Level
99442	Doctoral Level
99442	Masters Level
99443	MD Level
99443	Doctoral Level
99443	Masters Level
A0425	Ambulance - per mile
A0427	MD Level
A0427	Doctoral Level
A0427	Masters Level
A0428	Ambulance - per service
A0429	Ambulance - per service
H0014	MD Level
H0014	Doctoral Level
H0014	Masters Level
H0015	MD Level
H0015	Doctoral Level
H0015	Masters Level
H0019	MD Level
H0019	Doctoral Level
H0019	Masters Level
H0020	MD Level
H0020	Doctoral Level
H0020	Masters Level
H0031	Board Cert Behavioral Analyst
H0031	Applied Behavioral Analyst
H0031	Aide

**Mental Health and Substance Abuse Program RFP #2014-MH-1
for the Empire Plan, Excelsior Plan and Student Employee Health Plan
Guaranteed Average Unit Cost Quote - Network Outpatient Services**

H0032	Board Cert Behavioral Analyst
H0032	Applied Behavioral Analyst Aide
H0035	MD Level
H0035	Doctoral Level
H0035	Masters Level
H2011	MD Level
H2011	Doctoral Level
H2011	Masters Level
H2012	MD Level
H2012	Doctoral Level
H2012	Masters Level
H2019	Board Cert Behavioral Analyst
H2019	Applied Behavioral Analyst Aide
S9484	MD Level
S9484	Doctoral Level
S9484	Masters Level

Totals

GAUC Quote - Network Outpatient Services ($\Sigma d / \Sigma a$)

- (1) Offeror's projected utilization for the 2015 Plan Year pertaining to incurred claims paid as primary.
- (2) The Offeror should use its 2015 average contracted fee for each CPT/HCPCS code in support of its proposed GAUC.
The supporting average contracted fees are not binding to the Offeror.
- (3) The contracted amount per CPT/HCPCS Code should represent the unit amount per service/mile and the amount is prior to the application of any Copayment or Bad Debt and Charity assessments.
- (4) If payment of contracted fees do not vary according to provider licensure, insert the projected utilization and fee quote on the first code line.

Mental Health and Substance Abuse Program RFP 2014-MH-1
for the Empire Plan, Excelsior Plan and Student Employee Health Plan
Guaranteed Average Unit Cost Quote - Network Inpatient and Alternative Level of Care (ALOC) Services

Revenue Code		
0114		
0116		
0118		
0124		
0126		
0128		
0134		
0136		
0138		
0144		
0154		
0156		
0158		
0450		
0451		
0459		
0510		
0513		
0710		
0761		
0888		
0900		
0901		
0905		
0906		
0912		
0913		
0914		
0915		
0916		
0919		
0940		
0941		
0944		
0961		
1001		
1002		

Mental Health and Substance Abuse Program RFP 2014-MH-1
for the Empire Plan, Excelsior Plan and Student Employee Health Plan
Guaranteed Average Unit Cost Quote - Network Inpatient and Alternative Level of Care (ALOC) Services

**Guaranteed Average Unit Cost
(GAUC) Quote - Network Inpatient
and ALOC Services (Σ c / Σ a)**



- (1) Offeror's projected utilization for the 2015 Plan Year pertaining to incurred claims paid as primary.
- (2) The Offeror should use its 2015 average contracted fee for each Revenue code in support of its proposed GAUC.
The supporting average contracted fees are not binding to the Offeror.
- (3) The contracted amount per Revenue Code should represent the unit amount per day/service and the amount is prior to the application of the Copayment or Bad Debt and Charity assessments.

EMPIRE PLAN MIXED SERVICES PROTOCOL
Medical v. Behavioral Health Clarifications

Services, treatment, supplies and equipment that qualify as covered services under the applicable Member Contract and designated as Medical on this Exhibit shall be the financial responsibility of MEDICAL CARRIER or HOSPITAL CARRIER and services, treatment, supplies and equipment that qualify as Covered Services under this Agreement and designated as mental health/substance abuse care on this Exhibit shall be the financial responsibility of ValueOptions®. Where the term psychiatric diagnosis is used in this document it means the mental health and substance abuse diagnosis listed in the Benefit Rules Document.

Key to Optum MSP	Medical vs. Behavioral Health	Explanation	Financial Responsibility
II – B, II- F, II – G, II – H, II – I,	1. When a Member is admitted for treatment of a medical diagnosis and there is a concomitant psychiatric diagnosis, the medical care rendered is the responsibility of EBCBS	Patient is admitted to a medical unit. This is a medical benefit.	EBCBS
II – B, II- F, II – G, II – H, II – I,	2. When a Member is admitted for treatment of a psychiatric diagnosis and there is a concomitant medical problem, the psychiatric care rendered is the financial responsibility of ValueOptions. ➤ If a member receives psychiatric treatment while on a medical unit, this is the responsibility of ValueOptions. ➤ If the Member is medically cleared and transferred to a psychiatric unit, ValueOptions shall assume financial responsibility upon transfer to the psychiatric unit. This benefit needs to be pre-certified. ➤ If the Member is transferred to a medical unit at the recommendation of a non-psychiatrist, EBCBS is responsible ➤ If medical care and or medical tests continues when the Member is on a psychiatric unit, the medical portion of the claim, including tests ordered by a non-psychiatrist shall be the responsibility of EBCBS	Patient is admitted to a psychiatric unit. This is a ValueOptions benefit, covered after pre-certification by ValueOptions. Pt receives psychiatric consults on a medical unit. This is a ValueOptions benefit. Routine medical procedures covered under the per diem rate are ValueOptions' responsibilities. Medical tests on a psychiatric unit outside of routine procedures covered under the ValueOptions facility contract are the responsibility of EBCBS Example: MRI ordered to rule out organic cause of psychosis. Claims must be itemized to reflect psychiatric and medical charges.	ValueOptions ValueOptions Split: ValueOptions/ EBCBS

EMPIRE PLAN MIXED SERVICES PROTOCOL
Medical v. Behavioral Health Clarifications

Key to Optum MSP	Medical vs. Behavioral Health	Explanation	Financial Responsibility
II- J	3. Lab and routine medical tests ordered by a ValueOptions participating provider with a psychiatric diagnosis are the responsibility of UHC ➤ Labs and routine medical tests ordered by a medical provider even those with a psychiatric diagnosis are the responsibility of UHC	A psychiatrist orders labs for a pt on Lithium A PCP orders a urine drug screen to rule out Substance use	UHC or EBCBS if lab services at OP Hospital and EE is physically present UHC or EBCBS if lab services at OP Hospital and EE is physically present
II - C	4. When a Member receives uncomplicated inpatient detoxification in a free standing substance abuse facility VO is financially responsible. When the seriousness of the enrollee's medical condition, as determined by a non-psychiatrist, requires treatment on a medical unit other than the designated detoxification unit, the expense shall be considered a medical expense and shall not be the financial responsibility of ValueOptions.	Patient admitted to a free standing substance abuse facility. VO is financially responsible Patient admitted to a medical detoxification unit in an acute care facility, either on a detox unit or medical unit, VO performed the utilization review, but EBCBS is financially responsible. Patient is admitted to a medical unit other than a designated detoxification unit (i.e. Hospital that does not have a detox unit). This is a medical benefit. VO will complete the Utilization review of these service and work with the medical carrier to ensure appropriate claims payment	VO EBCBS EBCBS
II - B	5. When a Member is admitted to a medical unit for a medical complaint, but the medical evaluation does not lead to a medical diagnosis and a psychiatric diagnosis is then assigned to the case, at the point when the patient is medically cleared and transferred to a psychiatric unit and the primary care giver is a psychiatrist the care	The patient is admitted to a medical unit by a non-psychiatrist. Evaluation notes a psychiatric diagnosis is the cause of admission. This is the responsibility of	EBCBS

EMPIRE PLAN MIXED SERVICES PROTOCOL
Medical v. Behavioral Health Clarifications

Key to Optum MSP	Medical vs. Behavioral Health	Explanation	Financial Responsibility
	rendered shall be the financial responsibility of ValueOptions. <i>Subject to ValueOptions review of medical necessity, and preauthorization.</i>	EBCBS The patient is transferred from a medical primary care giver to a psychiatric primary care giver and transferred to a psychiatric unit under the care of a psychiatrist. ValueOptions is responsible for payment.	ValueOptions
II-A	6. A member is referred or presents at an emergency room and obtains services which are not followed by a hospitalization.	ValueOptions will be responsible for all claims with a behavioral health diagnosis	ValueOptions
II-K	8. All ambulance transfers between psychiatric units and from medical units to psychiatric units shall be the responsibility of ValueOptions. ValueOptions is not financially responsible for ambulance transfers from psychiatric to medical units. <i>ValueOptions is responsible for emergency ambulance transportation to emergency rooms for members with psychiatric diagnosis. If the member requires transportation to a psychiatric unit this is the cost of ValueOptions.</i>	ValueOptions is responsible for ambulance transfers between psychiatric units if authorized by ValueOptions. Ambulance transfers from the community which result in psychiatric admission will be paid by ValueOptions. ValueOptions is responsible for ambulance transfers from a medical unit to a psychiatric unit if authorized by ValueOptions. ValueOptions is responsible for ER to psychiatric transfers to the nearest ValueOptions authorized facility ValueOptions is not responsible for ambulance transfers from a psychiatric unit to a medical unit.	ValueOptions ValueOptions ValueOptions ValueOptions UHC/or EBCBS if ambulance is hospital owned and operated

EMPIRE PLAN MIXED SERVICES PROTOCOL
Medical v. Behavioral Health Clarifications

Key to Optum MSP	Medical vs. Behavioral Health	Explanation	Financial Responsibility
		ValueOptions is responsible for the cost of transportation to the ER when a psychiatric diagnosis is submitted.	ValueOptions
II-D	9. When a Member undergoes psychological or neurological testing (e.g., one of several diagnostic procedures used to determine organic brain disease or deficit), such testing shall be the financial responsibility of UHC. Psychological testing is a covered benefit and paid by ValueOptions when evaluated by ValueOptions to be a Medically Necessary part of the patient's psychiatric evaluation process and when pre-certified.	Neurological testing for a medical diagnosis is the responsibility of UHC. This includes testing ordered by a non-psychiatrist to establish severity or prognosis for conditions commonly believed to be medical: including but not limited to brain injury, dementia and stroke. Psychological testing if pre-certified by ValueOptions and as part of the patient's psychiatric evaluation will be paid for by ValueOptions. Neurological testing ordered for a mental health diagnosis shall be paid for by ValueOptions. Precertification is recommended	UHC ValueOptions UHC
II - L	10. When a Member undergoes treatment that includes biofeedback and such treatment: has been demonstrated to be effective in the treatment of conditions that are primarily medical in nature, ValueOptions shall not be clinically or financially responsible. If treatment is for a DSM-IV diagnosis and is provided by a provider who meets ValueOptions' minimum licensure requirements, it will be covered. Peer Advisor preauthorization is recommended.	Treatment of conditions that are medical in nature are not reviewed or paid for by ValueOptions. If treatment is for a DSM-IV diagnosis and authorized by ValueOptions it will be covered.	UHC ValueOptions
II - E			

EMPIRE PLAN MIXED SERVICES PROTOCOL

Medical v. Behavioral Health Clarifications

Key to Optum MSP	Medical vs. Behavioral Health	Explanation	Financial Responsibility
	11. Members receiving inpatient or outpatient ECT by an authorized provider at an authorized facility shall have their psychiatric treatment paid for by ValueOptions	If the member receives inpatient or outpatient ECT ValueOptions is responsible for the psychiatric charges. The charges for the facility, treatment, anesthesia and drugs will be paid for by ValueOptions Independent anesthesiology bill related to ECT	ValueOptions UHC
	12. When the above guidelines are insufficient, the following additional general principles shall be used to determine claim responsibility: (a) What is the primary cause for hospitalization? Which condition could only be treated in a hospital setting? (b) What does the medical record list as a primary diagnosis for this admission? (c) Is the attending physician of record a psychiatrist or a Primary Care Physician/medical consultant? (d) Has a member been admitted to a psychiatric unit or a medical/surgical unit?	(a) Is the patient's primary diagnosis a psychiatric one and could it only be treated in an inpatient psychiatric setting? (b) Does the medical record list the primary diagnosis as a DSM-V diagnosis defined in Attachment I? (c) Is the attending physician a psychiatrist? This is a ValueOptions benefit. Is the attending physician a medical doctor? This is not a ValueOptions benefit. (d) Patient is receiving care in a psychiatric unit. This is a ValueOptions benefit. Patient is receiving care in a medical/surgical unit. This is not a	

EMPIRE PLAN MIXED SERVICES PROTOCOL
Medical v. Behavioral Health Clarifications

Key to Optum MSP	Medical vs. Behavioral Health	Explanation	Financial Responsibility
	(e) What condition is causing a member to remain in the hospital and who is treating this problem?	ValueOptions benefit. (e) Is the diagnosis, which required continued hospitalization, a DSM-V diagnosis as defined in Attachment I, and is the patient treated by a psychiatrist?	
	13. In the event that application of these general principles is insufficient in establishing differentiation between what is a medical versus a psychiatric claim, the ValueOptions Medical Director and the MEDICAL CARRIER or HOSPITAL CARRIER Medical Director shall collaborate to arrive at a final determination.		

By signing below, I, as an authorized signatory of the plan, represent that the aforementioned mixed services protocol are approved and will be incorporated into the plan documents and the summary plan description made available to beneficiaries on or before the effective date of services performed by ValueOptions, Inc.®


Client Signature: Approval

Tricia C. Evans - Contract Manager
Print Name & Title

11/8/13
Date

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

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STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.

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

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

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

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

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

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

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

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

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS.

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

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.

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

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

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

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

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

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

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

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

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

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

APPENDIX B
STANDARD CLAUSES FOR ALL DEPARTMENT CONTRACTS

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

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

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

30. NONDISCLOSURE OF CONFIDENTIAL INFORMATION

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

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

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

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

This representation shall survive termination of the Agreement.

31. FREEDOM OF INFORMATION LAW

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

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

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

32. TERMINATION OF AGREEMENT

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

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

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

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

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

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

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

33. CONTRACTOR PERSONNEL

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

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

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

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

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

34. OPERATIONAL CONTACTS

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

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

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

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

35. SUBCONTRACTING

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

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

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

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

36. PUBLICITY AND COMMUNICATIONS

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

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

37. CONSULTANT DISCLOSURE REQUIREMENTS

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

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

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

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

39. VENDOR RESPONSIBILITY

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

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

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

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

41. CONTRACT PAYMENT

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

May 2011

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
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

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT
ATTACHMENT 1 – SECURITY REQUIREMENTS**

1. Right to Use Connection

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

2. Data Exchange

- 2.1 Third Party may only use the data obtained for purposes outlined by the Third Party Connection and Data Exchange Request Requirements Document (Attachment 2) and the contract or Memoranda of Understanding, if any, that exists between DCS and Third Party for the provision of goods or services or governing conduct between DCS and Third Party with respect to the access to and use of DCS data.
- 2.2 Data exchange may be conducted only by methods and/or services outlined by the Third Party Connection and Data Exchange Request Requirements Document (Attachment 2). Third Party should expect that access to information and services may be limited, as determined or required by DCS.

3. Network Security

- 3.1 Third Party will allow only its own employees approved in advance by DCS (“Third Party Users”) to access the Network Connection or any DCS-owned equipment. Third Party shall be solely responsible for ensuring that Third Party Users are not security risks, and upon DCS’ request, Third Party will provide DCS with any information reasonably necessary for DCS to evaluate security issues relating to any Third Party User.
- 3.2 Third Party will promptly notify DCS whenever any Third Party User leaves Third Party’s employ or no longer requires access to the connection or DCS-owned Equipment.
- 3.3 Each Party will be solely responsible for the selection, implementation, and maintenance of security procedures and policies that are sufficient to ensure that (a) such party’s use of the connection (and Third Party’s use of DCS-owned Equipment) is secure and is used only for authorized purposes, and (b) such Party’s business records and data are protected against improper access, use, loss alteration or destruction.
- 3.4 The preferred connectivity method is via the Internet to a DCS-approved or DCS-provided Virtual Private Network (VPN) device. If the device is DCS-provided, DCS will loan the Third Party, in accordance with the DCS Equipment Loan Agreement, the required client software for establishing VPN connections with DCS. Normal DCS perimeter security measures will control access to the internal network.
- 3.5 Extranet – Designated routers are used in combination with firewall rules to allow access to be managed. A second authentication may be required.

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

4. Notifications

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

Third Party Name:	NYS Department of Civil Service Empire State Plaza, Building 1
Address:	Albany, New York 12239 Fax: (518) 473-3292
Attention:	Attention: Tricia Evans

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.

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
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)*

David Boland
Employee Benefits Division
NYS Department of Civil Service
Albany, New York 12239
[REDACTED]
[REDACTED]

Back-up Point of Contact: *(Data Custodian)*
Barbara Vaughn
Employee Benefits Division
NYS Department of Civil Service
Albany, New York 12239
[REDACTED]
[REDACTED]

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 will be transmitted to and received by Third Party via an SFTP connection. Limited Third Party staff will have inquiry access to NYBEAS to verify Managed Mental Health and Substance Abuse Program enrollment.

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:

Secure receptacles are used to dispose of sensitive material.

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:

Address:

Email Address:

Phone Number:

Manager's Name:

Manager's Phone:

Backup Contact

Name:

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:

Escalation List:

Domain name(s):

Host name(s):

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

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

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/ mail to: NYS Department of Civil Service, Albany, NY 12239, 518-485-5590, Attention: Carol Hanes.

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
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 DCS Help Desk, at 518-457-5406 phone; 518-485-5588 fax.

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.

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
THIRD PARTY CONNECTION AND DATA EXCHANGE AGREEMENT
ATTACHMENT 4 – EQUIPMENT LOAN AGREEMENT**

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	
Equipment To Be Loaned		
Quantity	Description	Value
Purpose Of Loan		
CONDITIONS OF LOAN		
1. The Borrower of the above equipment agrees to return same in like condition as received from DCS, normal wear and tear excepted, on or before the above return date, unless the loan period is formally extended. 2. Upon termination of this Agreement, Borrower shall uninstall all DCS software included in this Agreement from Borrower's computer and/or network equipment. 3. The Borrower shall not make any copies of DCS software included in this Agreement. 4. In case of loss or damage beyond repair, DCS shall be reimbursed by Borrower at the current price of replacement. 5. The equipment shall not be loaned or transferred to a third party without the written consent of DCS. 6. The right is reserved to cancel the loan or recall the equipment upon _____ days' notice. 7. The Borrower shall assume all shipping and/or transportation costs involved. 8. Other conditions:		

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

August 2015

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

M/WBE AND EEO POLICY STATEMENT

I, Douglas Thompson, the (awardee/contractor) EVP & CFO of ValueOptions, Inc. agree to adopt the following policies with respect to the project being developed or services rendered at the New York State Department of Civil Service.

M/WBE

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

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from 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.

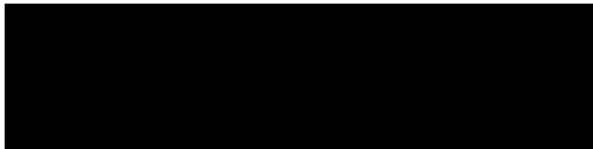
(d) The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), 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



M/WBE Contract Goal

HDB Contract Goal





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.